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LABOR DISPUTE SETTLEMENTS

WAGE & SALARY STABILIZATION

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War Labor Reports

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UNIVERSITY OF ILLINOIS

Regulations, Orders, and Decisions with Index-Digest

NATIONAL WAR LABOR BOARD
BUREAU OF INTERNAL REVENUE
OFFICE OF ECONOMIC STABILIZATION

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Action on Cases for Review by National War Labor Board

The following cases, decided by regional war labor boards or commissions and reported in War Labor Reports, were acted on by the National Board in the period covered by this volume.

The cases are arranged alphabetically. Each case is identified by name and number and is followed by a statement of the region or commission by which the case was originally decided, the volume and page reference in War Labor Reports where the decision is reported, the party on whose petition appeal was taken, and the action taken upon it. If the review is on the Board's motion, it is so stated.

Star (★) indicates new items or items on which action was taken since prior appearances on this list.

Addressograph-Multigraph Co. (No. 111-11614-D). Petition for review of decision of Regional Board V (23 War Lab. Rep. 327) denied.

Atlas Powder Co. (No. 111-2204-D [7-D-297]). Decision of Regional Board VII (21 War Lab. Rep. 196) amended on company petition for review (26 War Lab. Rep. 142).

★ Cherry Growers, Inc. (No. 111-11562-D). Petition for review of decision of Regional Board XI (24 War Lab. Rep. 119) denied. Union petition on issues of maintenance of membership and probationary employees.

City National Bank & Trust Co. of Chicago (No. 3866-D). Decision of NWLB (22 War Lab. Rep. 468) amended on company petition for review (26 War Lab. Rep. No. 2, XII).

★ Douglas Aircraft Co., Inc. (Nos. 111-11182-D and 111-11183-D), Decision of Regional Board X (25 War Lab. Rep. 229) amended on petition for review (26 War Lab. Rep. 375).

Duplex Printing Press Co. (No. 111-8295-D). Petition for review of decision of Region XI (22 War Lab. Rep. 198) denied. Company petition on discontinuance of a 20-minute lunch period.

East Side Busses, Inc., et al. (No. 111-12585-D—Region XII). Decision of Region XII (25 War Lab. Rep. 181) amended on petition for review (26 War Lab. Rep. 93).

Edward Ermold Co. (No. 111-6453-D). Decision of Regional Board II (20 War Lab. Rep. 629) amended on company petition for review (26 War Lab. Rep. 296).

Ellis-Klatscher Co. (No. 111-9922-D). Decision of Regional Board X (21 War Labor Rep. 485) amended on company petition for review (26 War Lab. Rep. 161).

Fairbanks Co. (No. 111-10504-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 595) denied. Company petition on following issues: unfair procedure, negotiation of fixed relationship between piece work rates and base rates, payment of average hourly earnings for temporary transfers, six paid holidays, liberalization of vacations (computation of pay), and retroactive date.

F. H. Vahlsing, Inc. (No. 111-7180-D). Decision of Regional Board VIII (22 War Lab. Rep. 606) amended on joint petition for review (26 War Lab. Rep. 287).

General Motors Corp. (No. 111-4503-D). Decision of NWLB (22 War Lab. Rep. 484) amended on petition for review (26 War Lab. Rep. No. 1, XXXV).

★ Goodyear Tire & Rubber Co. (No. 111-10081-D). Petition for review of decision of Regional Board VI (23 War Lab. Rep. 89) denied.

J-M Service Corp. (No. 111-6983-D). Decision of Regional Board VII (17 War Lab. Rep. 809) amended on joint petition for review (26 War Lab. Rep. 239).

★ Laclede Steel Co. (No. 111-5602-D). Decision of Regional Board VII (23 War Lab. Rep. 595) remanded on company petition for review (26 War Lab. Rep. 438).

★ Marco Co., Inc. (No. 111-10764-D). Petition for review of decision of Regional Board III (23 War Lab. Rep. 684) denied. Company petition on issues of union recognition, union shop, and check-off.

Metz Mfg. Co. (No. 2179-D). Decision of NWLB (19 War Lab. Rep. 498) amended on petition for review (26 War Lab. Rep. No. 1, XXXVI).

Mines Equipment Co. (No. 111-7994-D). Decision of Regional Board VII (20 War Lab. Rep. 423) amended on joint petition for review (26 War Lab. Rep. 148).

National Lead Co. (No. 111-10369-HO). Petition for review of decision of Regional Board VII (22 War Lab. Rep. 195) denied. Company petition on method of computation of vacation pay issue.

Nelson Bros. Co. (No. 111-11191-HO). Petition for review of decision of Regional Board III (22 War Lab. Rep. 155) denied. Company petition on piece rates and vacation issues.

★ *Indicates decisions in this issue*

New York Herald-Tribune (No. 111-8188-D). Decision of Newspaper Commission (22 War Lab. Rep. 430) amended on petition for review (26 War Lab. Rep. 18).

Olympia Retail Merchants (No. 111-11213-D). Petition for review of decision of Regional Board XII (21 War Lab. Rep. 835) denied. Union petition on following issues: work-week, wages, and length of apprenticeship.

★ Olympic Club (No. 111-5605-D [10-D-373]). Decision of Regional Board X (20 War Lab. Rep. 605, 21 War Lab. Rep. 890) amended on joint petition for review (26 War Lab. Rep. 352).

Pettibone-Mulliken Corp. (No. 111-5387-D). Decision of NWLB (26 War Lab. Rep. 162) amending prior directive order (24 War Lab. Rep. 625).

Phillips Petroleum Co. (No. 111-11916-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 581) denied.

Phillips Petroleum Co. (No. 111-11460-D [7-D-1514]). Petition for review of decision of Regional Board VII (23 War Lab. Rep. 128) denied.

Potash Company of America (No. 111-8946-D). Decision of Non-Ferrous Metals Com. (19 War Lab. Rep. 406) amended on joint petition for review (26 War Lab. Rep. No. 2, XIX).

Reno & Sparks, Nevada Grocery Industry (No. 111-8880-D). Decision of Regional Board X (21 War Lab. Rep. 308) affirmed on petition for review (26 War Lab. Rep. 296).

Reynolds Metal Co., Inc. (No. 111-10661-HO [5-HO-1012]—Region V). Decision of Region V (24 War Lab. Rep. 360) amended on petition for review (26 War Lab. Rep. 95).

Sheffield Farms Co., Inc. (No. 111-10431-D). Petition for review of decision of Region II (23 War Lab. Rep. 290) denied. Company petition on night-shift bonus of 5 cents per hour ordered for work performed on second and third shifts.

★ Silver Bow Employers' Assn. (No. 111-11836-JB). Petition for review of decision of Regional Board IX (22 War Lab. Rep. 405) denied.

Southern Aircraft Corp. (No. 111-12882-D). Petition for review of decision of Regional Board VIII (23 War Lab. Rep. 459) denied. Company petition on issue of the meaning of the term grievance in contract.

★ Sunshine Cab Corp. (No. 111-2710-D). Decision of Regional Board II (17 War Lab. Rep. 476) amended and interim decision of National Board (22 War Lab. Rep. 302) supplemented (26 War Lab. Rep. 349).

Timken Roller Bearing Co. (No. 111-14-682). Petition for review of decision of Regional Board V (24 War Lab. Rep. 376) denied. Company petition on following issues: standard maintenance-of-membership compulsory check-off, initiation fees and dues, denial of management clause, denial of no-strike clause, hours of work, leaves of absence for union officers, and intents and purposes (supervisory employees).

U. S. Potash Co. (Nos. 111-9728-HO and 111-9243-HO). Petition for review of decision of Non-Ferrous Metals Commission (19 War Lab. Rep. 406) denied.

★ Welfare & Recreational Assoc. of Public Bldgs. and Grounds (No. 111-11866-D). Petition for review of decision of Regional Board III (24 War Lab. Rep. 397) denied. Company petition on issue of retroactive date.

★ Western Pipe & Steel Co. of California (No. 111-5541-D). Petition for review of decision of Regional Board X (22 War Lab. Rep. 166) denied.

W. L. Maxson Corp. (No. 111-11295-D). Petition for review of decision of Regional Board II (23 War Lab. Rep. 604) denied. Company petition on incorporation of existing group insurance or hospitalization benefits in contract issue.

★ *Indicates decisions in this issue*

Regulations, Part 803, General Orders Revoked *

Statement of National War Labor Board, Issued Aug. 24, 1945, WLB Press Release B-2200B

GENERAL ORDERS NOS. 1, 1A, 2, 3, 11, 26, and 31

The National War Labor Board hereby revokes the following general orders effective Aug. 20, 1945: Nos. 1 [21 War Lab. Rep. XXXVII; WCDS 161]; 1A [21 War Lab. Rep. XXXVII; WCDS 116]; 2 [21 War Lab. Rep. XXXVII; WCDS 116]; 3 [21 War Lab. Rep. XXXVII; WCDS 1161]; 11 [21 War Lab. Rep. II; WCDS 1291]; 26 [21 War Lab. Rep. LXIII; WCDS 141]; and 31 [23 War Lab. Rep., No. 1, IV].

* Ed. Note: These orders were revoked in conformance with Executive Order 9599 (26 War Lab. Rep., No. 3, V) and General Order No. 40 (26 War Lab. Rep., No. 3, IX) "which permit voluntary wage increases through collective bargaining (where there is a union) or by voluntary action of the employer (where there is no union) without the necessity of WLB approval." (WLB Press Release B-2200B, Issued Aug. 24, 1945)

Regulations, Part 803, General Orders Amended *

WLB Press Release B-2200B, Issued Aug. 24, 1945

GENERAL ORDER NO. 5

Adopted Oct. 14, 1942, as amended May 26, 1943, and Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. XLIII, WCDS 122.]

Sec. 803.5—Wage Adjustments in Cases of Established Wage Agreements

Wage adjustments may be made in wage rates of individual employees without approval of the National War Labor Board if they are incident to the application of the terms of a wage agreement or incident to an established wage rate schedule covering the work assignments of employees and are made as a result of:

(a) Individual promotions or reclassifications,

(b) Individual merit increases within established rate ranges,

(c) Operation of an established plan of wage increases based upon length of service within established rate ranges,

(d) Increased productivity under piecework or incentive plans, or

(e) Operation of an apprentice or trainee system.

Wage adjustments made under this order shall not result in any appreciable increase of the level of production costs and shall not furnish a basis either to increase prices or to resist otherwise justifiable reductions in prices.

GENERAL ORDER NO. 7

Adopted Oct. 28, 1942, as amended Aug. 2, 1943, Aug. 3, 1945, and Aug. 20, 1945

[Ed. Note: Supersedes 26 War Lab. Rep. No. 1, XXIX.]

Sec. 803.7 — Increases in Compliance with State Minimum Wage Laws

Since Title VI, Sec. 1, of Executive Order No. 9250 dated Oct. 3, 1942 [11 War Lab. Rep. VII; WCDS 21], states that "nothing in this order shall be construed as affecting the present operation of the Fair Labor Standards Act" and since statutes and orders of the duly constituted authorities of the several states fixing minimum rates for certain types of workers carry out the true purposes and intent of the Fair Labor Standards Act and are designed and intended to eliminate substandards of living within the meaning of Sec. 2 of Title II of Executive Order 9250, the National War Labor Board hereby approves increases in wage and salary rates made in compliance with such statutes and orders, provided, however, that, if any changes in such statutes and orders are made or promulgated after Apr. 8,

* Ed. Note: These orders were amended in conformance with Executive Order 9599 (26 War Lab. Rep., No. 3, V) and General Order No. 40 (26 War Lab. Rep., No. 3, IX) "which permit voluntary wage increases through collective bargaining (where there is a union) or by voluntary action of the employer (where there is no union) without the necessity of WLB approval." (WLB Press Release B-2200B, Issued Aug. 24, 1945)

1943, increases directed thereby which would result in a wage or salary rate in excess of the rate which the War Labor Board establishes as a minimum wage rate by General Order No. 30 [24 War Lab. Rep. No. 3, XII; WCDS 142] may not be made without the approval of the Board except as provided in General Order No. 40 [26 War Lab. Rep., No. 3, IX],

GENERAL ORDER NO. 9

Adopted Oct. 30, 1942, as amended May 26, 1943, and Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. XLVI; WCDS 124.]

Sec. 803.9—Salaries Totaling Not in Excess of $5,000 per Annum

III. Salary Increases Which Do Not Require Board Approval

Salary adjustments may be made in salary rates of individual employees over which the Board has jurisdiction without approval of the Board if they are incident to the application of the terms of a salary agreement or incident to an established salary rate schedule and are made as a result of:

(a) Individual promotions or reclassifications,

(b) Individual merit increases within established rate ranges,

(c) Operation of an established plan or salary increases based on length of service within established rate ranges,

(d) Increased productivity under incentive plans,

(e) Operation of an apprentice or trainee system, or

(f) Such other reasons or circumstances as may be prescribed in orders, rulings, or regulations promulgated under the authority of these regulations.

Salary adjustments made under this order shall not result in any appreciable increase of the level of production costs and shall not furnish a base either to increase prices or to resist otherwise justifiable reductions in prices.

GENERAL ORDER NO. 10

Adopted Nov. 6, 1942, as amended Sept. 12, 1944, Mar. 1, 1945, and Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. XLVIII; WCDS 538.]

Sec. 803.10—Payment of Bonuses

The payment to employees whose wage or salary adjustments are subject to the jurisdiction of the National War Labor Board of a bonus or gift may be made without the approval of the National War Labor Board provided that such payments will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will not increase the cost to the United States.

GENERAL ORDER NO. 10-A

Adopted Dec. 14, 1942, as amended Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. LI; WCDS 129.]

Sec. 803.10-A—Bonus Payments to Employees Leaving for Military Service

A bonus payment made by an employer to an employee severing his employment for the immediate purpose of entering the armed forces of the Unted States does not require the approval of the National War Labor Board, provided that such payments will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will not increase the cost to the United States.

GENERAL ORDER NO. 16

Adopted Nov. 24, 1942, as amended Jan. 3, 1944, and Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. LVII; WCDS 135.]

Sec. 803.16—Wages of Female Employees

Increases which equalize the wage or salary rates paid to females with the rates paid to males for comparable quality and quantity of work on the same or similar operations and increases in accordance with this policy which recognize or are based on differences in quality or quantity of work performed may be made without approval of the National War Labor Board, provided that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under con-

tract with a federal procurement agency, will not increase the cost to the United States.

GENERAL ORDER NO. 22

Adopted Dec. 8, 1942, as amended Aug. 20, 1945

[ED. NOTE: Supersedes 21 War Lab. Rep. XLI; WCDS 139.]

Sec. 803.22—Escalator Clause

No clause contained in any labor agreement, commonly known as an "escalator clause," relating to wages or salaries subject to the jurisdiction of the National War Labor Board, regardless of when the agreement was made, which provides for an increase in wage or salary rates shall be enforced without the approval of the National War Labor Board if such increase will be used, in whole or in part, as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will increase the cost to the United States.

GENERAL ORDER NO. 36

Adopted June 6, 1944, as amended June 14 and July 18, 1944, and Aug. 20, 1945

[ED. NOTE: Supersedes 21 War Lab. Rep. LXXXIV, WCDS 161; the present amendment revises Sec. I. D.]

Sec. 803.36—Adjustment of Wages or Salaries in Hawaii

I. Organization and Jurisdiction

A. There is hereby created within the Territory of Hawaii the Territorial War Labor Board for Hawaii, to consist of the following members to be appointed by the National War Labor Board: Representatives of labor, two of whom are to be available for service with the Territorial Board at any given time; representatives of industry, two of whom are to be available for service with the Regional Board at any given time; and representatives of the public, two of whom are to be available for service with the Territorial Board at any given time. There shall be two co-chairmen and one or more vice-chairmen, to be designated by the National War Labor Board from among the public representatives.

B. The Territorial War Labor Board for Hawaii shall have jurisdiction over all labor disputes and voluntary wage and salary adjustments in Hawaii within the jurisdiction of the National War Labor Board. It shall have power subject to the same review by the National War Labor Board as other regional war labor boards, to issue final orders and rulings in such cases.

C. The Territorial War Labor Board for Hawaii shall comply with all pertinent provisions of the "Rules of Organization and Procedure of the National War Labor Board," especially Part VI, entitled "Jurisdiction and Procedure of Regional Boards," provided, however, that the Territorial War Labor Board for Hawaii may, by unanimous vote of its members, make such modifications in its procedures as are deemed by it to be necessary for its efficient administration. Such action shall be promptly reported to the National War Labor Board and shall be subject to the National War Labor Board's ultimate power of review.

D. In acting hereunder on wage and salary adjustments, the Territorial War Labor Board for Hawaii shall comply with the terms of Executive Order 9250, dated Oct. 3, 1942 [11 War Rep. Lab. Rep. VII; WCDS 32], Executive Order 9328, dated Apr. 8, 1943 [7 War Lab. Rep. VII; WCDS 261], the supplementary directive of May 12, 1943 [8 War Lab. Rep. XIV; V CDS 57], Executive Order 9599 of Aug. 18, 1945 [26 War Lab Rep., No. 3, V], and all other Executive Orders and regulations issued thereunder. The Territorial War Labor Board may make such recommendations as to appropriate policies to govern wage and salary adjustments as are adapted to the special circumstances obtaining in the Territory. Such recommendations shall be consistent with the Act of Oct. 2, 1942 [25 War Lab. Rep., No. 3, V; WCDS 9]. They shall be submitted for consideration of the National War Labor Board, which will transmit to the Director of Economic Stabilization those recommendations deemed by it advisable and necessary. (Adopted Aug. 20, 1945.)

II. Wage and Salary Adjustments Which May Be Made Effective Without Approval of Regional War Labor Board for Hawaii

A. Adjustments in the wage and salary rates of individual employees as a result of (1) individual merit increases, (2) individual increases based upon length of service, (3) operation of an apprentice or trainee system, (4) individual promotions or reclassifica-

tions, or (5) increased productivity under piecework or incentive plan; provided, however, that with respect to increases made under Subdivisions (1), (2), and (3) of this section, the total of such increases to any individual employee (subject to National War Labor Board jurisdiction) shall not exceed ten cents per straight-time hour during any year, and such increases during any such year shall not exceed an average of five cents per straight-time hour for all the employees (subject to National War Labor Board jurisdiction) in the establishment.

B. Increases in wage and salary rates made in compliance with any minimum wage statute or with any minimum wage order of the duly constituted authorities of the Territory of Hawaii.

C. Adjustments in the wage and salary rates of governmental employees of the Territory of Hawaii. It is expected, however, that the authorities of the Territory of Hawaii will observe and abide by the same stabilization policies as are made applicable generally in the Territory.

D. Establishment of a wage or salary rate or range of rates for a job classification not theretofore established for the plant involved, the rate or rate range so established to bear the same relation to rates or rate ranges for similar classifications in the area as the existing rates in the plant bear to comparable rates or rate ranges in the area, provided, however, that rates for new establishments or new departments within existing establishments must be submitted for approval.

E. The payment to employees whose wage or salary increases are subject to the jurisdiction of the National War Labor Board of a bonus, fee, gift, commission, or other form of compensation customarily paid to such employees in the past, provided that:

(1) If in a fixed amount, the total amount so paid to an employee during the current bonus year does not exceed the total so paid to an employee for like work during the preceding bonus year, or

(2) If computed on a percentage, incentive, or other similar basis, the rate and the method of computation are not changed in the current bonus year so as to yield a greater amount than that in the preceding bonus year but a greater amount when resulting from the same rate and method of computation may be paid.

F. No general order heretofore or hereafter issued by the National War Labor Board shall be applicable to the Territory of Hawaii unless expressly extended thereto by action of the National War Labor Board or Territorial War Labor Board for Hawaii; provided, however, that the Territorial War Labor Board for Hawaii may, in case of small total wage and salary increases, modify the provisions of Pars. (D) through (E) above or adopt and apply to the Territory any of the general orders of the National War Labor Board or parts thereof and issue such amendments thereto as it may in its discretion deem necessary for the effective administration of its duties hereunder. Such action shall be promptly reported to the National War Labor Board and shall be subject to the National War Labor Board's ultimate power of review, but any modification or reversal thereof shall not be retroactive.

GENERAL ORDER NO. 37

Adopted Aug. 3, 1944, as amended Aug. 20, 1945

[Ed. Note: Supersedes 21 War Lab. Rep. LXXXVII, WCDS 164; the present amendment revises the introductory statement.]

Sec. 803.37—Adjustments in Rates of Pay of Employees of War Department in Hawaii

The National War Labor Board hereby supplements General Order No. 36 [21 War Lab. Rep. LXXXIV; WCDS 161] by delegating to the Secretary of War, or to such agency as he may designate, subject to final review by the National War Labor Board, the authority to establish wage or salary schedules for civilian employees of the War Department in the various government-owned, government-operated installations located in the Territory of Hawaii, in accordance with the pro- 2, 1942 [25 War Lab. Rep. No. 3, V; WCDS 9], Executive Order 9250 dated Oct. 3, 1942 [11 War Lab. Rep. VII; WCDS 32], Executive Order 9328 dated Apr. 8, 1943 [7 War Lab. Rep. VII; WCDS 26], the supplementary directive of May 12, 1943 [8 War Lab. Rep. XIV; WCDS 57], Executive Order 9599 of Aug. 18, 1945 [26 War Lab. Rep., No. 3, V], and all other Executive Orders and regulations issued thereunder, subject to the following limitations:

(a) The June 6, 1944, level of wage and salary rates prevailing in army installations in the Territory of Hawaii

shall be maintained in accordance with the directions subsequently set forth in this order.

(b) Exclusive of the Hawaiian Air Depot, the approval of any wage or salary schedules resulting from job reclassifications shall not cause an overall increase in the job rates, as weighted by the number of employees in each job classification in all the establishments to which that schedule is applied, to exceed five per cent.

(c) Wage rates to be established through job reclassifications for the Hawaiian Air Depot shall be in conformity with the schedules for other War Department installations established in the Territory.

(d) The rates for any new classifications subsequently created in any War Department installation shall bear the proper relationship to the rates for immediately interrelated job classifications in that installation.

Regulations, Part 803, General Orders

WLB Press Release B-2200A, Issued Aug. 22, 1945

GENERAL ORDER NO. 41

Adopted Aug. 22, 1945

Sec. 803.41—Wage Procedure for Building and Construction Industry

The provisions of General Order No. 40 [26 War Lab. Rep. No. 3, IX] shall not apply to employers and employees in the building and construction industry who are subject to the jurisdiction of the Wage Adjustment Board as provided for in General Order No. 13 [21 War Lab. Rep. LII; WCDS 130].

Applications for the increase or decrease of wage rates in the building and construction industry, whether resulting from collective bargaining or otherwise, shall continue to be submitted to the Wage Adjustment Board for approval, as heretofore required, regardless of whether any increase will be used in whole or in part as a basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or for increasing the cost to the United States.

The Wage Adjustment Board for the building and construction industry, in addition to authority vested in it by General Order No. 13, is authorized, pursuant to Executive Order 9599 [26 War Lab. Rep., No. 3, V], to approve such increase as may be necessary to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy.

This general order shall be effective as of Aug. 18, 1945, and shall remain in effect for a period of 90 days thereafter or until further notice.

Pending Disputes: Procedure for Disposition

NWLB Instructions to Regional Boards, Panels, and Commissions, Issued Aug. 22, 1945, WLB Press Release 2206

There are now pending before the Board and its various agencies approximately 3,000 dispute cases in which final action by a Board agent has not yet been taken. In accordance with the chairman's telegram of Aug. 17, 1945, the wage issues in these cases are to be processed under the new policy set forth in Executive Order 9599 of Aug. 18, 1945 [26 War Lab. Rep., No. 3, V].

As a result of the new Executive Order and the effect it has had in enlarging the scope of collective bargaining and of the other events that have occurred since these disputes were first certified to the Board, it is quite possible that many of the pending cases or some of the issues can be resolved by agreement of the parties. Moreover, even if such agreement cannot be reached, the parties may be agreeable to a streamlined procedure for the final disposition of their case. They may, for example, be willing to submit their dispute to voluntary arbitration (using either an arbitrator mutually agreed upon or one appointed by the Board or considering the panel or hearing officer's report as a final arbitration award); or they may be prepared to accept the directive order of the Board agent as final, waiving any right of appeal; or certain issues may be withdrawn so as to leave for Board action only the really important ones.

The orderly termination of the Board's work as provided for in the President's statement of Aug. 16, 1945, [26 War Lab. Rep., No. 3, VII], makes it imperative that every effort be made to encourage the parties to renew collective bargaining or to resort to voluntary arbitration as a means of settling their disputes. If, in particular cases, neither of these courses is feasible, then the Board's duty is to proceed to a final decision as rapidly as possible and under as shortened a procedure as can be devised (by agreement of the parties where, under the Board's rules, that is necessary).

To this end, Board agents are directed immediately to take the following steps:

(1) In all pending dispute cases (i.e., cases in which no final action has been taken by a Board agent), the Board agent, through tripartite divisions, panels, hearing officers, or special investigators, is to communicate with the parties and determine whether the parties are desirous of resuming collective bargaining (with or without assistance of the Board representative) or of submitting their dispute to voluntary arbitration. In those cases where a panel or hearing officer's report has already been transmitted to the parties for their comments, Board agencies may in their discretion proceed immediately to final action in the case.

(2) In any case where the parties do not agree to resume collective bargaining or to submit their dispute to voluntary arbitration, every effort should be made to devise a streamlined procedure for the handling of the case.

(3) The New Case Committee in Washington, with respect to cases already certified but not yet assigned for processing, and the National Disputes Director (in consultation with a tripartite division of the National Board), with respect to National Board cases, are to take the same action as outlined above in (1) and (2).

(4) Cases not settled through collective bargaining or arbitration should be acted upon as quickly as possible either under a shortened procedure or, where that is not possible, in the usual manner.

(5) The steps outlined above are not intended to constitute an inflexible procedure to be used in every case. Each case should be handled in the light of its own particular facts and the past relationships of the parties.

The essential purpose is to achieve settlement of the dispute through agreement or voluntary arbitration or to complete processing of the case as quickly as possible.

Lumber Cases: Negotiation Under Reconversion Policy

Resolution of Board, Issued Aug. 21, 1945, by WLB Press Release B-2202

The National War Labor Board has concluded three days of discussion with employers, representatives of the International Woodworkers of America (CIO) and representatives of the Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners (AFL) concerning the wage cases involving the Western lumber industry pending before the National War Labor Board or the West Coast Lumber Commission. It was the concensus of opinion that the parties should be afforded reasonable opportunity through collective bargaining to reappraise the wage issues in the light of the new wage policy set forth in Executive Order No. 9599, issued Aug. 18, 1945 [26 War Lab. Rep. No. 3, V], and WLB General Order 40, issued on Aug. 21, 1945 [26 War Lab. Rep. No. 3, IX], and in relation to the problems of reconversion in the lumber industry. Assurance was given the Board that the parties were prepared to enter into collective bargaining on their return to the West Coast and that every effort would be made to conclude an agreement. If no agreement is reached, the parties will be prepared to present the cases to the Board.

The following program has been unanimously adopted by the Board with the approval of all parties concerned:

1. The wage issues in the pending cases are returned to the parties with directions to enter into collective bargaining in the light of Executive Order 9599 and WLB General Order 40 and in relation to the problems of

reconversion in the lumber industry.

2. The parties are to keep the WCLC advised of the progress made in negotiations.

3. The WCLC is to make an interim report to the WLB by Sept. 20, 1945, on the status of the negotiations.

4. On receipt of the WCLC report, the WLB will schedule hearings, contingent on the final outcome of negotiations. The tentative date for the commencement of hearings is Sept. 27, 1945.

5. In the interim, the WCLC is to analyze the issues in the pending cases, obtain any necessary further information, and prepare an agenda for the hearings, if found to be necessary.

6. The same procedure will be followed with respect to certain western lumber cases under the jurisdiction of regional boards.

Cases Previously Published in Which Opinions Have Subsequently Been Issued

MELVILLE SHOE CORP.—

Decision of National Board

In re MELVILLE SHOE CORPORATION [New York, N. Y.] *and* UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, RETAIL SHOE SALESMEN OF NEW YORK, LOCAL 1268, and RETAIL SHOE SALESMEN OF BROOKLYN AND QUEENS, LOCAL 287 (CIO). Case No. 111-6642-D (opinion made public Aug. 23, 1945).*

JOB PROTECTION—Guaranteed annual work

Contract should provide guarantee of 44 hours' work weekly for 52 weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees, where company presently subscribes to guarantee policy, which is incorporated in 95 per cent of union's contracts in industry in area, but fears that contract obligation would bar future reductions of staff. Employer's refusal to incorporate existing practice into contract is tantamount to refusal to bargain. In event of future difficulty over provision, however, parties may appeal to Board or successor agency for interpretation.

Supplementary Opinion of the Board

Aug. 23, 1945

FULL EMPLOYMENT CLAUSE

WITTE, Public Member:—In this case the National War Labor Board on June 20, 1945, approved, with modifications, the directive orders which were issued in 1944 by the Second Regional War Labor Board. Majority and dissenting opinions were thereafter filed dealing with the issue in this case to which the National Board devoted its major attention, that of sick leave pay. Since then an organized campaign has been launched, announced through the press, which has brought many protests to the Board directed against its decision on another issue in this case, entitled in the directive order of the Regional Board the "52-Week Guarantee Clause." This development makes it desirable that the full facts having relation to this issue should be set forth in another opinion.

On this issue, the National Board, with the industry members dissenting, sustained the section in the interim directive order of the Regional Board of Aug. 31, 1944, reading as follows:

"4. 52-Week Guarantee Clause

"Regular part-time employees shall be guaranteed 44 hours per week for 52 consecutive weeks per year.

"Regular part-time employees shall be guaranteed employment for 5 nights and a Saturday weekly for 52 consecutive weeks per year.

"The foregoing provisions shall not be subject to arbitration."

The reasons why the Regional Board issued this order are clear when the record is examined chronologically as set forth in detail below.

Background

This case was long contested and raised many issues. The unions were certified as the exclusive collective bargaining agency of the employees on Dec. 10, 1942, but no contract has been concluded to date. After certification, the unions promptly presented to the company the standard union agreement which is in effect in 95 per cent of the independent and chain retail shoes stores in metropolitan New York, in which the chain shoe stores involved in this case are located. Negotiations were carried on between the parties for nearly a year, which negotiations were fruitful of agreement on some of the matters dealt with in the standard union agreement (including some modifications thereof) but without result in other clauses. This agreement led the Secretary of Labor to certify this case to the National War Labor Board for settlement. The case was assigned to the Second Regional Board and heard by a tripartite panel, upon whose report the interim directive order of Aug. 31, 1944, was based.

In the standard union agreement which the unions presented to the company there was included the following as Art. VI:

* ED. NOTE: For action of the National and Regional Board in this case, see 26 War Lab. Rep. 30. In the bound volume of 26 War Labor Reports the headnote above will be substituted for the headnotes on "Job Protection" and "Arbitration" which appear at 26 War Lab. Rep. 31.

"Classification and Tenure of Employment"

"(a) Regular full-time workers shall be guaranteed 44 hours' work weekly for fifty-two consecutive weeks per year. This provision shall not be subject to arbitration.

"(b) Regular part-time workers shall be guaranteed employment for at least three full days weekly or for at least three nights and a Saturday weekly for fifty-two consecutive weeks per year. This provision shall not be subject to arbitration.

"(c) The employer may employ extra workers for Saturdays only for a period in advance of holidays or for an emergency. Such workers shall not be deemed to be permanent or regular workers but merely extras, and at the termination of the particular period for which they may be employed, they need not be reemployed."

Company's Position

In the statement of company's position presented to the Regional Board after certification of this case and prior to the panel hearing, the company stated its position on the above proposed Art. VI as follows:

"The company objects to the provisions of Art. VI except that it wishes to state it has been a matter of established company policy to provide regular full-time employees with 52 weeks' work a year, save those employees released through store closings. The company subscribes to this policy and agrees to incorporate it in the agreement.

"The company objects to Subdivision (b) on the ground that it does not have regular part-time employees in its employ who are similar to the employees of other chains.

"The company, moreover, opposes the inclusion of Subdivision (c) because extra workers are not covered in the certification and should not be covered in the agreement."

The panel, in its report and recommendations made after the hearings in the case, stated that the position taken by the parties on this issue was as follows:

"52 weeks' guarantee without right of layoff (Art. VI, (a)-(b)):

"By the unions: That the gurantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and 5 nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time workers shall not be subject to arbitration. (The company merely objecting to provisions forbidding arbitration); that, to grant to this company the right to arbitrate permanent layoffs if the business conditions dictate, would threaten the security of the workers; that such provisions 'are the backbone of the agreement'; and that, under Art. V, Subdivision (d) (the replacement clause), the unions are willing to permit the company to arbitrate replacements of vacancies where undue hardships result upon the company.

"By the company: That it is unalterably opposed to the provisions of Art. V, Subdivisions (a) and (b), providing for a 52-week guarantee; that it does not object to providing 52 weeks of work for all regular workers retained in its employ; that its established policy is to provide these workers with 52 weeks a year, save those workers released through store closing; that a provision of guaranteed employment is contrary to the well established policies of the Board (citing cases, pp. 20-21 of memorandum); and that all of the arguments outlined in opposition to the replacement clause (aforementioned) apply with equal force to the prohibition against permanent layoffs."

On the basis of the statement of their respective petitions prior to the hearings and the testimony presented, the panel unanimously recommended:

"4. 52 weeks' guarantee clause without right of layoff:

"That's the union's request as set forth in Art. VI, Subdivisions (a) and (b), of the proposed collective bargaining agreement should be granted."

It is to be noted not only that the panel (industry, labor, and public) was unanimous in this recommendation but also that it deviated but little from what the company had asked for in its statement of company position. In that statement the company had objected strongly to Subdivision (c) of Art. VI of the standard union agreement, and the panel did not recommend this provision. The company had stated specifically regarding Subdivision (a):

"The company subscribes to this policy and agrees to incorporate it in the agreement."

It's only objection to Subdivision (b) was that it has no regular part-time employees "who are similar to the employees of other chains." (The principal difference being that it employs these regular part-time employees five nights a week instead of

on three nights as provided in the standard union agreement).

In its comments submitted on behalf of Melville Shoe Corporation to the recommendations of the panel, the company made the following statement relating to the panel's recommendations on the "52-Week Guarantee Clause":

"The company excepts to this recommendation of the panel because it is contrary to the well established policies of the National War Labor Board.

"At the outset it must be noted that the company does not object to provide 52 weeks of work for all the regular employees retained in its employ. Its well established policy is to provide these employees with 52 weeks a year of employment, save those employees released through store closing. To its credit, it must be observed that the company is against the use of temporary layoffs or 'Scotch Vacations' in periods of seasonal slack. However, the company is unalterably opposed to the provisions of (a) and (b), Art. VI, of the union's proposed contract which prohibits any permanent layoffs regardless of the company's need or the conditions of its business.

"It is unmistakably clear that the unions have demanded and the panel has recommended a clause for a 52-week guarantee and a complete prohibition against permanent layoffs of regular employees irrespective of the extent of the reduction in the volume of the company's business and despite the degree of the diminution in the scope of the company's operating needs.

"It is of signal significance that the panel's recommendation accepts at full value the union's proposal as implemented by the indefensible clause that 'This provision shall not be subject to arbitration.' The insertion of this startingly strange provision in a collective bargaining agreement is obviously intended to override any ambiguity that may arise in carrying out the provision for 52 weeks' employment. All this points to the inescapable conclusion that the company will be deprived of its right to layoff permanently any regular employees no matter what circumstances dictate such action."

Union's Position

The union's comments on the panel's recommendations have this to say on this issue:

"It is the employer's position that, while it will provide its regular full-time workers with 44 hours' work weekly for 52 consecutive weeks per year or while it will provide its regular part-time workers with employment on five nights and a Saturday weekly for 52 consecutive weeks per year, it wishes to have the right to arbitrate permanent layoffs if the business conditions dictate such course.

"It is the unions' position that regular full-time and regular part-time workers be guaranteed work for the one-year period of the agreement just as every other regular full-time and regular part-time worker in the retail shoe industry is so guaranteed work.

"The provisions of Subdivisions (a) and (b) are the backbone of the agreement.

"They are contained in every agreement which the unions have been signing for years with employers. To modify them in the instant agreement would introduce a serious situation in the industry and would quite likely cause difficulties when the unions attempted to secure renewals of agreements containing these provisions with employers.

"Besides, the employer a long time ago agreed to these provisions of Subdivisions (a) and (b) and only recently went back on its agreement. Over a year ago during the negotiations, the employer agreed upon Subdivisions (a) and (b). It continued its acquiescence to Subdivisions (a) and (b) thereafter and up to very recently, and it was only at one of the last conferences preceding the resumption of hearings by the panel that the employer stated that it wished Subdivisions (a) and (b) modified."

"The employer now wishes to go back on its own agreement during the negotiations. It should not be permitted to do so, particularly since its agreement on this score played a large part in inducing the unions to compromise disputed issues.

"The employer agreed during the negotiations preceding the panel hearing on very few matters. There were only two really vital matters that it agreed upon. In both instances, it wishes to go back on its agreement. This is one of the instances. It should be kept to what it promised and to what it always stated was its

own policy—52 consecutive weeks a year guaranteed employment for all regular workers, without any right of layoff or arbitration with respect to layoffs."

"Besides, the normal operation of Art. V, Subdivision (d), Art. XVI, Subdivision (a), and Art. VI, Subdivision (c) of the unions' proposed collective bargaining agreement will remove any possible hardship upon the employer even if a hardship can be assumed because of the operation of the 52-week guarantee. Under Art. V, Subdivision (d), the replacement clause, the unions are willing to permit the employer to arbitrate replacements of vacancies in regular positions where undue hardship results upon the employer. Under Art. XVI, Subdivision (a) (which the parties agreed upon), the employer can dismiss regular workers in the event of store closings. Under Art. VI, Subdivision (c) (which the parties have agreed upon), the employer can discharge its extra workers at will. If there should ever be a situation where one of the employer's stores has too many regular workers—and this is impossible to conceive under the employer's setup—the operation of Art. V, Subdivision (d), Art. XVI, Subdivision (a), and Art. VI, Subdivision (c), will obviously correct the situation."

Board Policy

The above is a complete statement of all essential facts on this issue as presented to the Regional War Labor Board, on the basis of which it issued the directive order previously set forth. The Regional Board's order on this issue was appealed to the National Board. Under its rules of procedure the question presented to the National Board by this appeal was whether the Regional Board in its decision contravened National Board policy, as claimed by the company.

The company based this claim upon decisions of this Board in which we refused to direct employers to provide a guaranteed minimum amount of employment per year. In the protests against our decision upholding the Regional Board, which we have received, it is assumed by the writers that we have reversed the policy set forth in these earlier decisions.

This is not a correct interpretation of the Board's decision in this case. The Board decides every case on its own facts. In upholding the decision of the Second Regional Board, the National Board held that, in view of the peculiar facts presented in this case the Regional Board did not contravene National Board policy in directing the Melville Shoe Corporation to guarantee 44 hours of work per week for 52 weeks per year to its regular employees. It decided that in this case such an order was proper, not that guaranteed employment will be directed in all cases nor even that it will normally be directed. It is the peculiar facts presented in this case which render proper the order of the Regional Board.

Unusual Circumstances

These facts include not only clear evidence that the guaranteed employment provisions directed by the Regional Board are in effect in the overwhelming majority of all retail shoe stores in the area but also the statement in the statement of the company's position filed with the Regional Board after certification of this case that "the company subscribes to this policy (that of guaranteeing all regular employees 44 hours of work for 52 weeks per year) and agrees to incorporate it in the agreement." The unions set forth that the company made the same statement during the negotiations preceding the certification of this case, that this was one of the few contract provisions the company would agree to, and that, in return for this concession, the unions had dropped other demands. This statement made by the unions has never been denied by the company.

This is a peculiar fact distinguishing this case from other cases in which this Board was asked to direct employers to institute guaranteed employment plans. This fact made the issue presented to this Board on the company's petition for review: whether the Regional Board erred in holding the company to its agreement (which appears in its own statement of company position filed with the Regional Board). As thus analyzed, only one answer would seem to be possible, and that is that the Regional Board's decision must be upheld. From this it does not follow, however, that employers who have not agreed to the inclusion of guaranteed employment plans will be directed to include such provisions in their union contracts.

Another special fact in this case was that the company now has in effect the guaranteed employment plan directed by the Regional Board (as again, appears from its own statements). This fact raised the issue whether the Regional Board was justified in directing the inclusion of the guaranteed employment plan in the contract because this plan is actually in operation in the company's stores. On this point, the general counsel of this Board, in an opinion given to the appeals committee in another case (Tidewater Assoc. Oil Co.; Case No. 111-5206-D) under date of Dec. 30, 1944 [23 War Lab. Rep., No. 1, XII], summarized the law applicable to this situation as follows:

"The decisions of the NLRB indicate that an employer's refusal to incorporate in a contract an existing employment practice concerning which no present inclination toward discontinuance is advanced constitutes a refusal to bargain, at least in the absence of any compelling evidence to justify the employer's position."

In this opinion two Circuit Court of Appeals decisions are cited supporting the position of the National Labor Relations Board that a company's refusal to incorporate into a collective bargaining agreement its existing practices constitutes a refusal to bargain and, hence, an unfair labor practice under the National Labor Relations Act: NLRB v. Knoxville Publishing Co., 124 F.2d 875; Singer Manufacturing Co. v. NLRB 19 F.2d 131. In the last cited case, moreover, the United States Supreme Court denied a writ of certiorari, thereby refusing review of the decision of the Circuit Court of Appeals.

In view of these decisions of the National Labor Relations Board and the Courts, it became appropriate to inquire whether there was "compelling evidence" in this case justifying the company in refusing to incorporate its guaranteed employment policy in its agreement with the unions. If there is such evidence, it consists of the company's statements to the effect that the inclusion of this policy in the union agreement would prevent it from laying off any of its regular employees even when it has to close a store or sustains a great reduction in the volume of its business.

An examination of the record discloses that there is little, if any, merit in this contention. Despite the company's statements regarding store closing, it is clear from the record that Art. XVI of the standard union agreement, upon which the parties were in agreement, expressly permits regular employees to be permanently laid off when stores are closed. This article provides that, when a store is closed, the regular employees affected shall be employed in other stores, replacing employees who have less seniority. It further provides that employees laid off in this "bumping" process shall have preferential rights in filling future vacancies. But it is clear that, under the agreed upon contract provision, the company has the right to reduce the number of its employees when it closes a store. It is, also, clear that the panel and the Regional Board rejected the provision sought by the unions limiting the employment of "extras" so that the company is entirely unrestricted in laying off as many "extras" as may be necessary. Finally, it is of importance in this connection that the National Board, on the company's petition for review, eliminated from the directive order in this case the "Replacement Clause" sought by the unions, which would have restricted the company's discretion as to whether vacancies occurring among the regular employees should be filled. In view of these other provisions in the contract, it would seem that the company's claim that it is left in a helpless position when the volume of its business is drastically decreased is an overstatement to say the least. It may be, that the "52-Week Guarantee Clause" directed by the Regional Board is not as specific as the company would like on what it can do when confronted by great reductions in its business. Should such a situation develop and the company and the unions cannot agree on the meaning of this clause, the matter can be submitted to the Regional Board for interpretation, with a right of appeal to this Board (or if this Board is not then in existence, to its successor agency of other appropriate government tribunal). But there is no reason to anticipate difficulty as the identical provisions are in effect in the union's contract with all or nearly all other retail shoe stores in metropolitan New York and no difficulties appear to have developed thereunder.

As this case came to the National Board on a petition for review, the question presented was not whether the directive of the Regional Board was worded in the clearest manner

possible nor whether this Board would have issued this order if it had originally decided the case. The sole question was whether the order of the Regional Board was so clearly unreasonable as to require that it be set aside. To the majority of this Board such a conclusion seemed unwarranted in view of the fact that the identical provision are included in the contracts of all or nearly all other retail shoe stores in the area. The order, further, merely directed the practice which the company throughout the consideration of this case has stated it now observes voluntarily; moreover, it appears to have agreed to the insertion of this provision in its agreement with the unions in the negotiations which preceded certification of this case, and very certainly it definitely stated that it was agreeable to include this provision in the agreement in its statement of company positon which it filed with the Regional Board after the case was certified. It was upon these facts that the panel (with the industry member concurring) unanimously recommended the clause as it was directed by Regional Board.

This case is, thus, very different factually from all other cases which have come before this Board involving a union demand for guaranteed employment provisions. Nor are we likely to ever again have any case presenting the same facts. It is upon the peculiar facts in this case that the National War Labor Board based its decision upholding the provisions in the directive order of the Second Regional War Labor Board relating to guaranteed employment. It should be understood that it does not follow that this Board will direct guaranteed employment provision in other cases where the facts are different.

War Labor Board and Secretary of Labor—

Certification of Dispute Cases in Interim Period

[Ed. Note: Below appear the statements and letters documenting an understanding between the Department of Labor and the War Labor Board as to the disputes which will be certified to the War Labor Board by the Secretary of Labor in the interim period until the functions of the War Labor Board are transferred to a permanent body. First appears a joint statement by the Secretary of Labor and the chairman of the War Labor Board. This is followed by a statement by the Board and by an exchange of letters between George W. Taylor, chairman of the Board, and Lewis B. Schwellenbach, Secretary of Labor.]

JOINT STATEMENT ON PROCEDURE

Issued Aug. 28 by Lewis B. Schwellenbach, Secretary of Labor, and George W. Taylor, chairman of the War Labor Board

We have worked out a procedure for settlement of labor- management disputes during the interim period until the War Labor Board completes its emergency functions and a permanent basis for adjustment of disputes is established. The Board has instructed its regional boards to redouble their efforts to decide speedily the approximately 3,000 dispute cases not pending which were certified by the Department of Labor prior to Aug. 18. The parties involved will be requested to try to settle their cases by direct negotiations under the revised wage stabilization policy, which permits more flexibility in working out a mutually satisfactory disposition of wage questions.

In new dispute cases, the regional boards and the Conciliation Service of the Department of Labor will seek primarily to restore collective bargaining to its normal function, and every effort will be made to resolve these disputes without recourse to further governmental procedures. If the parties involved cannot negotiate a settlement, they will be urged to refer the dispute to arbitration where the dispute lends itself to this method of disposition.

If other measures fail, the parties to a dispute should, if they desire further governmental participation in their settlement, agree to submit it to the War Labor Board for final and binding determination. Where the parties agree in advance to accept the Board's decision in the case, the Board will accept certification automatically from the Department of Labor. The Board recognizes that the Secretary has the obligation under the Executive Order 9599 to certify dis-

putes which might interrupt work contributing to the production of military supplies or interfere with effective transition to a peacetime economy. The Board states that, when the Secretary finds it necessary to certify such a case where the parties have failed to agree to accept the Board's decision, the Board will work out a procedure adapted to settlement of that particular dispute.

POLICY IN HANDLING DISPUTE CASES

Statement Issued by Board
Aug. 28, 1945

The National War Labor Board has been considering during the past few days the establishment of procedures for disposing of labor disputes during the period which lies immediately ahead. The Board's discussions have been directed toward the effectuation of the principles laid down in the statement of the President [26 War Lab. Rep. No. 3, VII], issued on Aug. 16, and in Executive Order 9599 [26 War Lab. Rep. No. 3, V], issued on Aug. 18.

The problem has been faced squarely as one of establishing interim and transitional procedures to obtain only until other procedures for handling labor disputes have been worked out. The need for avoiding any disruption or dislocation of industrial relations is as real now as it has been during the past three and one-half years.

Two groups of dispute cases must be considered. The first includes the approximately 3,000 cases now pending before the Board and its regional boards and which were certified by the Department of Labor prior to Aug. 18. The second group of dispute cases includes those which may be brought to the Government's attention during this transitional period.

The Board is under special obligation to make final disposition of the pending dispute cases. The regional offices have been instructed to redouble their efforts to decide these cases. Wherever circumstances warrant, these cases will be heard in the first instance by the Regional Board itself, rather than by a panel which makes recommendations as a preliminary to Board action.

Several factors affect, however, the question of the most expeditious and appropriate method of settling these pending disputes. Executive Order 9599 changes the wage stabilization policy. There is more flexibility now and more room for the parties to work out a mutually satisfactory disposition of their wage issues. They will also realize that their future relationships will depend upon their ability to work out their own problems, and many will desire to return promptly to this basis of settlement. Some companies and unions will undoubtedly want to anticipate the Board's termination by utilizing the normal peacetime practices of private arbitration where their own efforts fail and where the nature of their difference permits it.

These and related considerations underlie the Board's instructions to its regional boards to make every effort to work out with the parties to each pending dispute case a disposition which will accord fully with their particular interests. Informal conferences will be arranged in order to determine what procedures will be most effective in each case. Established Board procedures are, however, available to the parties to any pending dispute case. The Board recognizes and will discharge its full wartime responsibility in connection with the settlement of these cases which developed and were certified during the war.

The acceptance of new dispute cases presents different considerations. They must be treated in a manner which will not perpetuate a program justified only by the necessities of war emergency and which will facilitate the transition to peacetime methods of settlement. Since peacetime principles and procedures will involve a lesser element of governmental participation and a greater reliance on collective bargaining, it is good government to work now in that direction.

This increased reliance on collective bargaining has a corollary. There is the generally recognized desirability of building up the role of the U. S. Conciliation Service. The effective operation of this service is a normal adjunct of collective bargaining.

These transitional procedures must permit the fullest development of the conciliation function.

The Government's wartime labor program was based on the pledges of industry and labor, made immediately after Pearl Harbor, to accept voluntarily the governmental determinations of their disputes. The observance of those pledges constituted the substantial sanction supporting the wartime decisions of the War Labor Board. It is a fact to be taken into

account, with no suggestion of criticism, that these commitments have not been renewed to cover this interim period. It would be unwise to attempt to administer a program based on sanctions which no longer exist.

These are the factors which explain the tentative program which the Board has formulated, after conferences with the Secretary of Labor for the handling of new labor disputes which may reach an aggravated stage during this interim period. The Board has recommended to the Secretary of Labor that with respect to these cases the Conciliation Service consult with the parties as to the expanded scope of collective bargaining created by Executive Order 9599 and that every effort be made to resolve these disputes without recourse to further governmental procedures. It has also been suggested that, through the program of the Conciliation Service, the parties be urged to refer to arbitration any dispute which they cannot themselves work out and which lends itself to this method of disposition.

Finally, the Board has indicated that, if these other measures fail, the parties to a dispute should, if they desire further government participation in its settlement, agree to submit it to the War Labor Board for final and binding determination. The President's statement of Aug. 16, formalized in Executive Order 9599, called upon industry and labor to renew their policy of voluntary compliance with War Labor Board decisions. This assumes the concurrence of all parties involved in the disposition of any case by the Board. Since such concurrence is not today manifest in any general over-all agreement, such as that made at the labor-industry conference in December 1941, it is appropriate that it be given instead in each case as it arises. Lacking such concurrence, the utility of recourse to the Board is limited.

The Board is instructing its regional boards to develop, with representatives of the Conciliation Service, new procedures for working out with the parties, prior to any formal certification, those lines of approach which appear to offer the greatest possibility of resolving disputed issues in the most expeditious manner. Finally, if there should develop particular circumstances which appear to warrant special consideration, the Board will consult with the Secretary of Labor and with other interested government agencies to determine upon special procedures.

During this period, the Board may best serve its transitional function by adapting its procedures to particular cases as they arise and by reserving its determinative functions, so far as new cases are concerned, primarily for those situations in which both parties to a dispute seek its services. Such a program will facilitate the restoration of collective bargaining.

WLB CHAIRMAN'S LETTER TO SECRETARY OF LABOR

Dated Aug. 27, 1945

On Aug. 24, 1945, the National War Labor Board adopted by majority vote the following resolution:

"That with respect to cases not yet certified to the War Labor Board, the Board recommends to the Secretary of Labor that in view of the issuance of Executive Order No. 9599, of Aug. 18, 1945, the Conciliation Service should consult with the parties, making them aware of the changes in national wage policy, with a view to the resumption of collective bargaining and conciliation procedures, if necessary, and the reconciliation of the issues in dispute by agreement of the parties or by a stipulation for arbitration or by voluntary submission to the National War Labor Board for final and binding determination."

This resolution embodies a proposed policy of the Board to effectuate the President's interim or transitional program for the handling of labor disputes which are brought to the attention of the Government.

It is our common desire that a renewed emphasis be placed upon the full use of collective bargaining in disposing of labor disputes. There is also our mutual conclusion that the conciliation procedures of the Department of Labor can contribute substantially to the elimination of many disputed issues which the parties are unable to resolve alone. The Board's resolution of Aug. 24 recognizes these considerations. It seems to us that a ready acceptance of numerous cases by the Board at this time would not only hinder the full use of collective bargaining procedures but would be incompatible with the program for termination of the Board's activities.

The resolution reflects, too, the Board's judgment that the spirit of the President's proposals requires the concurrence of all parties involved in the disposition of any case by the

Board. Since such concurrence cannot now be based upon a general, over-all agreement, such as that made by the Labor-Industry Conference in December 1941, it is important that it be given in each particular case. We feel that, lacking such concurrence, the utility of recourse to the Board is limited.

The action of the Board in no way forecloses its consideration, in cooperation with the Department of Labor, of the handling of particular cases presenting special problems. Should a situation arise in which the combined efforts of the parties and of the Conciliation Service did not permit the type of disposition contemplated by this resolution, the Board would feel it desirable that its representatives should consult with those of the Department to determine upon procedures for handling the case.

I should like finally to suggest that, in effectuating the type of case handling suggested by the Board's resolution, the regional staffs of the Board stand ready to assist the Conciliation Service during this period of transition to the end of securing settlements in the pending cases and in those which may arise. Under the resolution, such cooperation would be developed in connection with the handling of these cases prior to formal certification.

The Board will appreciate and await your advice as to this recommendation.

SECRETARY OF LABOR'S LETTER TO CHAIRMAN OF THE WLB

Dated Aug. 27, 1945

This is to acknowledge receipt of your letter of Aug. 27, in which you quote the resolution adopted by the Board on Aug. 24 concerning certification procedures.

I want the Board to know that I appreciate its attitude and to assure the Board that it will receive full cooperation from the Department of Labor. Of course, I will be glad to instruct the Conciliation Service that it should consult with the parties, making them aware of the change in the national wage policy, with a view of the resumption of collective bargaining and conciliation procedures. I will also instruct the Conciliation Service to make effort to secure the reconciliation of issues in dispute by a stipulation for arbitration.

I will instruct the Conciliation Service in those cases in which, in the opinion of the conciliator, such procedure is practicable to make effort to secure the voluntary submission of the disputes to the National War Labor Board for final and binding determination. As I told you this morning, it is the belief of the Conciliation Service that in certain types of cases it would be undesirable for that Service to go too far in attempting to secure voluntary submission with a stipulation for the acceptance of the Board's determination. In other words, the whole background of the Conciliation Service's policy is limited to work of conciliation, and it is felt that in some cases at least too vigorous efforts to secure the acceptance of the idea of stipulations might detract rather than help the effort to secure such stipulations. In those cases the conciliator will contact the representatives of your regional boards with a view of having a Board certification conference at which the question of the acceptance of stipulations can be thrashed out.

As I told you this morning, I do not feel that I can enter into any understanding by which I would agree to disregard the mandate placed upon me by Executive Order 9599 to make certifications in those cases in which, in my opinion, the labor disputes might interrupt work contributing to the production of military supplies or interfere with effective transition to a peacetime economy. It seems to me that it is my duty to follow the requirements of this Executive Order.

As I explained to you today and to your group last week, I fully appreciate the task which your Board is confronted and the problems which will arise. I want to assure you again of my full cooperation and of my willingness and desire to be helpful. As I understand from you, it was not the purpose of the Board in adopting the resolution of Aug. 24 to request me to do other than I have indicated above.

Decisions

of the

National War Labor Board

Regional Boards, Commissions, and Courts

SUNSHINE CAB CORP.—

Decision of National Board

In re SUNSHINE CAB CORPORATION [New York, N. Y.] *and* TRANSPORT WORKERS UNION OF AMERICA, TAXI DIVISION, LOCAL 100 (CIO). Case No. 111-2710-D, Apr. 20, 1945 (made public Aug. 7, 1945).

Amending 17 War Lab. Rep. 476, supplementing 22 War Lab. Rep. 302.

WAGES — COST-OF-LIVING ADJUSTMENTS — Commission paid drivers—Application of 15 per cent increases to 1941 average earnings

Commission paid taxi drivers are not entitled to increases amounting to 15 per cent of average daily earnings in January 1941, as directed by Regional Board, where present earnings are substantially greater than earnings in 1941 without additional effort on part of employees. Wage question is returned to parties for negotiation with particular reference to establishment of minimum guarantee, and, if no settlement is reached within 30 days, Board will direct reasonable guarantee.

For other rulings see Index-Digest 245.315 in this or other volumes.

Unanimous decision of Board amending directive order of Regional Board II (New York). Public members concurring: Lloyd K. Garrison, Lewis M. Gill, Dexter M. Keezer, and Nathan P. Feinsinger. Labor members concurring: Van A. Bittner, John Brophy, Robert J. Watt, and James A. Brownlow. Employer members concurring: Hoey Hennessy, J. Holmes Davis, Charles S. Roberts, and S. Bayard Colgate.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby supplements its interim directive order of Jan. 25, 1945 [22 War Lab. Rep. 302], in so far as it relates to the issues of wages, and directs as follows:

I. The provision of the Second Regional War Labor Board's order dated May 9, 1944 [17 War Lab. Rep. 476], directing the company to pay 45 cents per day to each employee is vacated.

II. The parties are directed to negotiate a settlement of the wage issue. If a settlement is reached involving some form of wage adjustment, it shall be submitted to the Board for approval.

III. If the Board is advised by the parties after 30 days from receipt of this order that a settlement cannot be reached, the Board will direct a reasonable guarantee. If the parties so advise the Board, they shall submit their respective views as to the proper form and amount of a guarantee, with supporting data.

CONSOLIDATED VULTEE AIRCRAFT CORP.—

Decision of National Board

In re CONSOLIDATED VULTEE AIRCRAFT CORPORATION, STINSON DIVISION [Grand Rapids, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 381 (CIO). Case No. 111-14127-D, July 10, 1945 (made public Aug. 10, 1945).

SEVERANCE PAY—Denial in aircraft industry

Employees of airframe company are not entitled to award of severance pay since it would not be "fair and equitable" to compel severance pay under circumstances prevailing in aircraft industry where (1) it was known from start of war production that postwar aircraft production would amount to only small percentage of wartime volume and (2) virtually entire aircraft program is financed by Government and cost of any severance pay plan would have to be borne by Government.

For other rulings see Index-Digest 161.001 in this or other volumes.

VACATIONS—Eligibility—Increase in vacation pay to compensate for extended workweek

One year's seniority for purpose of determining vacation eligibility under contract should be defined as 12 months on company's payroll, as proposed by union, rather than, as proposed by company, 12 months of continuous service.

Limitation on amount of employees' vacation pay should be increased from 40 to 48 hours per week where company is operating on scheduled 48-hour week.

For other rulings see Index-Digest 205.112 and 205.150 in this or other volumes.

Majority decision of Board. Opinion of Board by Lewis M. Gill, public member. Public member concurring: Jesse Freidin. Employer members dissenting on Par. 1: Walter Knauss and Earl Cannon. Labor members dissenting with opinion on Par. 2: Neil Brant and Paul Chipman.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Vacation Pay *

(a) The parties are directed to adopt the union's interpretation of the word "seniority" as it appears in the first paragraph of the vacation provision agreed upon by the parties.

(b) The limitation of 40 hours' pay for one week's vacation per year shall be increased to 48 hours' pay.

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* ED. NOTE: The contract vacation clause provides for one week's vacation for "employees who have attained twelve (12) or more months of seniority." The union interpreted this clause as meaning that an employee becomes eligible after 12 months on

2. Severance Pay

The union's request is denied.

The foregoing terms and conditions of employment shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Opinion of the Board

Aug. 2, 1945

SEVERANCE PAY

GILL, Public Member:—The majority of the Board has declined to order severance pay in this case. The special problem presented in the Basic Steel case (19 War Lab. Rep. 568) [22 War Lab. Rep. 87], in which the Board directed negotiations on a severance pay plan, finds no parallel here. In that case the Board was concerned with the special equity of the regular employees in the industry in those plants which might be shut down after the war in favor of a transfer of the work to more modern steel plants erected during the war by the Government.

There is, as the labor members in their dissenting opinion point out, a different kind of problem in the aircraft industry. Large cutbacks may be expected at the end of the war, and some have already started. However, it was known from the start that postwar aircraft production would amount to only a small percentage of wartime production levels; most of the jobs were known to be comparatively temporary in nature. Another peculiar circumstance in this industry is that virtually the entire program is financed by the Government. In consequence, any severance pay plan would either have to be financed by the Government or the individual companies would have to foot the bill for severance payments to numbers of workers far in excess of their normal payroll.

Under these circumstances, we do not believe that it would be fair and equitable for the Board to order a severance pay plan. If such a plan is to be adopted, we think it should be done either by voluntary agreement of the parties or by appropriate legislation.

Dissenting Opinion of Labor Members

July 30, 1945

SEVERANCE PAY

BRANT and CHIPMAN, Labor Members:—In the instant case, the union requested a severance pay clause equivalent to four weeks' pay for six months to less than one year's service and eight weeks' pay for one year or more of service. The request of the union was summarily denied by the National War Labor Board, four-two, labor dissenting, on the grounds that it is contrary to National Board policy to award severance pay in dispute cases although it is Board policy to approve reasonable severance pay clauses where there is an agreement.

The public members gave no weight to the fact that the Board directed in the Basic Steel case, No. 111-6230-D, decided Nov. 25, 1944, as follows:

"The Board directs the company and the union to negotiate the terms of a severance pay agreement appropriate to each plant or company. The Board will approve, under the wage stabilization program, reasonable provisions for severance payments which may be mutually agreed to. If no agreement is reached within 60 days from the date of this directive order, union, but not to further provisions ered by preferential-hiring provision ported by the companies, and the union to the Board together with the nature and results of their negotiations."

In the Iron Ore cases, No. 111-6230-D, decided Mar. 23, 1945 [23 War Lab. Rep. 497], the Board issued the following order:

"The Board refers the issue of severance pay back to the parties for collective bargaining. The Board will approve reasonable provisions for severance payments, adapted to the particular conditions in this industry, which may be mutually agreed to. At any time after 60 days from the date of this directive order, either party may report to the Board on the state of their negotiations, and they will then be expected to submit specific information, in sufficient detail,

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the company's payroll, and the company interpreted the clause as meaning that an employee becomes eligible only after 12 months' continuous service.

With regard to computation of vacation pay, the contract provides for 2½ per cent of all of an employee's earnings during the preceding 12 months but not to exceed 40 hours' pay at the employees' straight-time rate. The plant is not operating 48 hours per week, and the union, therefore, requested that the limitation in the new contract be 48 hours' pay. (Information supplied by WLB staff.)

to enable it to determine the nature of the problem or problems that may exist and the extent of any further action which should then be taken by the Board."

It appears, therefore, that the National War Labor Board was ready and willing to direct severance pay when the merits of the cases required it. The labor members voted affirmatively in the above two decisions. There can be no question but that the steelworkers and iron ore miners deserve severance pay. The labor members hoped that that would be a beginning of a progressive policy on the part of the National War Labor Board on the question of severance pay. But, since these cases, the Board has consistently denied the demand for severance pay in every case in which it was made without considering the merits.

Can it be argued that, in the airframe industry, the problems that give rise to the need for severance pay are not immediate and pressing? Here is an industry that is at the present time facing tremendous cutbacks, resulting in thousands of workers being laid off. Workers have traveled from all sections of the country to the airframe plants. Now they are left stranded in communities where they have but a temporary home. Congress has utterly failed, as of this writing, in solving this problem affirmatively. The majority of the Board continues to lull to slumber its mind and conscience with the litany that severance pay is a national legislative problem. The Board continues to be derelict in its duty to resolve a dispute on the merits under the authority granted to it by the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5]. It prefers to follow a policy of do-nothing and general buck-passing. Such a policy the labor members vigorously oppose and the American working people resent. It leads to restlessness in our war factories and consequently hurts the war effort.

OLYMPIC CLUB—
Decision of National Board

In re OLYMPIC CLUB [San Francisco, Calif.] *and* HOTEL AND RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, SAN FRANCISCO JOINT EXECUTIVE BOARD OF CULINARY WORKERS AND HOTEL WORKERS * (AFL). Case No. 111-5605-D [10-D-373], May 7, 1945 (made public Aug. 7, 1945).

Amending 20 War Lab. Rep. 605, 21 War Lab. Rep. 890.

PREFERENTIAL SHOP—MAINTENANCE OF MEMBERSHIP—Preferential shop combined with membership maintenance

Union is entitled to union-security clause previously adopted by parties, providing for hiring through union, but not to further provisions directed by Regional Board on basis of practice in industry in area, namely, maintenance of membership without escape clause, preferential hiring, and provision that new employees hired outside union may be bumped by union members during first 30 days of their employment.

For other rulings see Index-Digest 110.340 and 135.220 in this or other volumes.

COLLECTIVE BARGAINING—Bargaining unit—Supervisory employee

Union's request is granted that chef employed by intrastate club be included in bargaining unit and be covered by preferential-hiring provision where union claimed that in all but two of largest establishments in industry in area head chef is classified as working chef and included in bargaining unit. Regional Board's order excluding chef is amended accordingly.

For other rulings see Index-Digest 32.847 in this or other volumes.

Majority decision of Board amending decision of Regional Board X (San Francisco). Public members concurring: Lewis M. Gill and Edwin E. Witte. Labor members dissenting on Pars. I-A, I-B(2), and III: James A. Brownlow and Neil Brant. Employer members dissenting on ac-

* Cooks Union, Local 44; Waiters Union, Local 30; Waitresses Union, Local 48; Bartenders Union, Local 41; Miscellaneous Union, Local 110; and Hotel Service Workers Union, Local 283.

ceptance of company petition on union security, Par. I-B(1) and Par. II in so far as it relates to vacations and retroactivity; Clarence O. Skinner and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board having accepted in part the petitions for review filed by the company and the union in the above entitled case and having reviewed the merits of the case with respect to union security and exclusion of chef from scope of bargaining unit and union-security provision, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Nov. 16, 1944 [20 War Lab. Rep. 605, 21 War Lab. Rep. 890], in this case shall govern the relations between the parties, with the following modifications:

(A) Union Security

The company's petition for review of this issue as accepted and, Part I, Par. P, of the said directive order of Nov. 16, 1944, is hereby vacated. The provisions contained in the memorandum of agreement dated June 23, 1938, shall govern the relations between the parties with respect to union security.

(B) Scope of Bargaining Unit

(1) The union's petition, in so far as it relates to chef, is accepted, and Part I, Par. P, of the said directive order of Nov. 16, 1944, is modified to provide for inclusion of chef in the bargaining unit. The chef shall be included in the union-security provisions ordered in Par. A above.

(2) That part of the union's petition which relates to hostess is denied.

II. The remainder of the company's petition for review is denied.

III. The remainder of the union's petition is denied.

Report and Recommendations of the Panel *

ISSUES

2. Scope of Bargaining Unit

Position of the Union

The employer, while being agreeable to recognizing the first five unions listed above (hereinafter referred to as the culinary unions) has refused to recognize the respective unions as bargaining agent for four (4) employee classifications, namely, the chef, hostess, dining room steward, and assistant dining room steward. It is the position of the union that the employees filling each of these job classifications should be included within the scope of the bargaining unit.

It is claimed that the chef is a working chef. It is further contended that the great majority of head chefs in the San Francisco area, all of whom are supervisory employees and who hire and fire their helpers and assistants are, nevertheless, members of the union, and the chef classification is included within the coverage of the contract between the union and the various employers.

The union points out that, according to the testimony, the hostess at the Olympic Club performs the same duties as are performed by hostesses employed elsewhere who are union members and who are covered by union agreements.

The union contends the same applies to the assistants of hostess, namely, the steward and the assistant steward.

Position of the Employer

Employees occupying supervisory positions should be excluded. A supervisory employee is a representative of management and consequently should not be placed in a position where he has obligations to both the union and management whom he represents. The agreement between the Joint Board and the Hotel Employers Association excludes "chefs employed solely in a supervisory capacity." †

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* Ed. Note: Only that portion of the panel report relating to the issue of the scope of the bargaining unit is reproduced. For background, listing of issues, and the issue of union security, see 20 War Lab. Rep. 605.

† See Appendix A to "Employer's Closing Brief," which consists of a decision by an arbitrator in a dispute which involved the meaning of "solely in a supervisory capacity." In that case it was held that: "The terms of the individual's employment did not, expressly or impliedly, require his performance of work other than of a solely supervisory nature, and that the manual work which he did has not been shown to be other than that of a solely supervisory nature."

The chef hires and fires and is in charge of the general management of the kitchen. Employer admits the chef does some manual duties but contends that the performance of such duties is incidental and necessary to the performance of the duties of supervisory chef.

With respect to the hostess, it is alleged such person hires and fires waiters, waitresses, and bus boys and has full charge of the dining room. Employer contends the hostess is clearly a representative of management.

It was further claimed by employer that the dining room steward and assistant steward are likewise management representatives. These two employees have charge in the absence of the hostess.

Findings

The facts are clear that the chef and the hostess are management representatives acting in a supervisory capacity. While each of them may perform some manual work, it is only incidental to their main function, which is directing and supervising the work of others and operating and controlling their respective departments as management representatives. On the other hand, it is found that the steward and assistant steward are not management representatives except to a limited extent.

Whether or not supervisory employees should be included or excluded from the bargaining unit, which is the problem we are here confronted with, is a problem which has received a great amount of attention in recent years. This question has been raised many times before the NLRB. It has also been raised many times in cases before the War Labor Board. In the earlier days of the WLB, such an issue was decided on its merits. However, it finally became recognized that in a case where the NLRB could take jurisdiction (i.e., where the employer is subject to the Wagner Act), the issue should be turned over to that agency for disposition.* In the instant case, the employer is engaged solely in intrastate commerce and therefore neither party is able to present the matter to the NLRB for determination. Under those circumstances, and since for the NLRB to decide this type of issue is not "assuming the virtual role of a statutory labor relations board",† in a state where the legislature has not acted the War Labor Board should settle this disputed issue. The early WLB cases involving this point‡ and the leading NLRB case§ hold that management representatives should not be included within the bargaining unit. The reasoning in those cases is sound and should be followed by the WLB in deciding this case.

Recommendation

Apply the foregoing to the facts of this dispute as hereinabove found, it is recommended that the bargaining unit exclude the chef and hostess and include the steward and assistant steward.

Signed by Kenneth L. White, representing the public; Ross L. Mack, representing employers; and George Johns, representing labor, subject to dissent with opinion on Issues 1 through 3, 5, and 7.

Dissenting Opinion of Labor Representative

Aug. 7, 1944

[Ed. Note: Issue 1, discussed in the dissenting opinion at this point, is omitted.]

SCOPE OF BARGAINING UNIT

In regard to the failure of the majority report to include the classifications of "chef" and "hostess" under the coverage of the collective bargaining agreement, the conclusions of the majority are clearly erroneous and not based upon either the record of this case or the uniform practice in the area. In no case in San Francisco is there a collective bargaining agreement held by the Joint Board which excludes from its coverage these two classifications. The fact was incontrovertibly established in the record. In the hotels, to which the majority refers throughout its report, hostesses are included under the agreement,

* See Federal Shipbuilding & Dry Dock Co., 12 War Lab. Rep. 39, affirming 11 War Lab. Rep. 226.

† See Savannah Laundry case, 14 War Lab. Rep. 11.

‡ See Motor Transit Co., 10 War Lab. Rep. 448; Padnos Iron & Metal Co., 10 War Lab. Rep. 581; Illinois Powder Co., 10 War Lab. Rep. 79.

§ Maryland Drydock Co., 49 NLRB 105, May 11, 1943; 12 LRR 439. In this case the NLRB stated: "To hold that the NLRA contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against judiciaries serving conflicting interests."

and the only chefs who are excluded are those in a "solely supervisory capacity."

The majority report assumes what is not a fact as developed by the record of this case, i.e., that these employees are "management representatives." While admitting that these employees perform "some manual work," the majority concludes that this is only incidental to their main functions as management representatives. There is no basis whatsoever in the record for such a conclusion, and, in drawing such an inference, the majority has flouted the record and area practice on this particular issue. As a matter of fact, the evidence in the record establishes that the chef at the Olympic Club is a working chef and that he is presently a member of the Cooks' Union. The record further establishes that the hostess performs no different function than the hundreds of hostesses employed in San Francisco hotels and restaurants, all of whom are covered by collective bargaining agreements.

The conclusion of the majority report was so strained on this issue that it was forced to resort to the analogy of NLRB rulings, the use of which, it is interesting to emphasize, was rejected by the majority in considering the issue of inclusion of service workers under the contract. No basis exists for drawing the distinction the majority seeks to draw between the hostess and chef employed at the Olympic Club and employees in this same classification employed throughout the area. The recommendation of the majority should therefore be rejected by the Board.

[ED. NOTE: Issues 3, 5, 7, and failure of the panel to "recommend adjustments of all issues in dispute between the parties or to lay down any guides by which such issues may be determined," discussed in the dissenting opinion at this point, are omitted.]

Signed by George Johns, representing labor.

TOLEDO MILK DISTRIBUTORS—

Decision of National Board

In re TOLEDO MILK DISTRIBUTORS ASSOCIATION* and KROGER GROCERY AND BAKING COMPANY [Toledo, Ohio] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, MILK AND ICE CREAM DRIVERS AND DAIRY EMPLOYEES, LOCAL 361 (AFL). Case No. 111-8905-D [5-D-916], June 12, 1945 (made public Aug. 24, 1945).

PREMIUM WAGE RATES—Premium pay under Premium Pay Order—Industry exempt from Order

Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and double-time for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practice prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.

For other rulings see Index-Digest 140.510, 140.610, and 140.230 in this or other volumes.

Majority decision of Board. Opinion by Dexter M. Keezer, public member. Public member concurring: Edwin E. Witte. Labor members dissenting on denial of union petition: Raymond McCall and John Brophy. Employer members dissenting with opinion on denial of company petition: William Maloney and Frederick S. Fales.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor

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* Ohio Cloverleaf Dairy, Page Dairy, Babcock Dairy, Village Farm Dairy, Cherry Grove Dairy, Degner Bros. Dairy, Scheffert Bros. Dairy, Trilby Farm Dairy, Peoples Daily, Glendale Dairy, and Driggs Dairy Farms, Inc.

Board, having considered the petition filed by Ohio Cloverleaf Dairy, Driggs Dairy, Babcock Dairy, Cherry Grove Dairy, and Degner Brothers Dairy and the petition filed by the union for review of the Fifth Regional War Labor Board's directive order of Jan. 19, 1945, in the above entitled case, hereby orders:

I. The said petitions for review are hereby denied, and the said directive order of Jan. 19, 1945, is hereby affirmed and adopted as the order of the National War Labor Board.

II. The request for an oral hearing is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Jan. 19, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Opinion of the Board

Aug. 13, 1945

OVERTIME PAY

KEEZER, Public Member:—In this case, the National Board affirmed an order of its Fifth Regional Board which, among other things, ordered the companies concerned which comprise the bulk of the milk distributing industry of Toledo, Ohio, to pay time and one-half for work on the sixth day worked in the workweek and on six holidays and to pay doubletime for work on the seventh day worked in the workweek. The industry members of the National Board disagreed with this decision and filed a written dissent which prompts this brief explanation of the basis of the majority decision.

The premium pay arrangements which the National Board approved in this case are, as noted by the dissident industry members, those prescribed by Executive Order 9240 [8 War Lab. Rep. XXVII, 26 War Lab. Rep., No. 3, IX; WCDS 20] for the operations governed by that Order. One major ground for their dissent is that the Secretary of Labor, the officer, empowered to interpret and apply Executive Order 9240, exempted the industry involved here from its provisions. Consequently, the dissenting industry members contend, it is grossly improper for the War Labor Board to apply the premium pay provisions of Executive Order 9240 to the industry by its directive order and thus undo the exemption made by the Secretary of Labor. Also they contend that in determining "area practice"—the basis of the Regional Board's decision to extend the premium pay provisions in question to this industry—that Board applied a more than dubious "synthetic standard" involving for the most part premium pay practice in war industries having nothing in common with the milk distributing enterprise involved in this case.

On the question of the significance of the exemption of the industry represented here from the application of Executive Order 9240, the majority simply took what has become the Board's standard position—that exemption from this Executive Order by the Secretary of Labor is not tantamount to a command not to apply the provisions of this order under any circumstances but rather a finding that it is not mandatory to apply these provisions. The provisions, however, may, by directive order of the War Labor Board, be applied to establishments in an exempted industry under special circumstances warranting such action.

The special circumstances found by the Regional Board to warrant the premium pay provisions ordered in this case was that it had become the area practice to make such premium payments. The practice of the milk distribution industry in Toledo was not regarded as relevant because the companies involved constitute most of the industry, and what they do in the matter of premium pay necessarily constitutes the "industry practice."

While not denying that it may be the "area practice" to make premium payments such as those ordered in this case, the dissenting industry members contend that, in order to establish the fact of such practice, it would be necessary to include the practice of a lot of war plants, the operation of which have little or nothing in common with the milk distributing industry and the premium pay practices of which therefore have no proper bearing upon what should be done in the milk distributing industry. They do not support this contention by presenting factual evidence, but common knowledge of the industrial setup of the Toledo area gives the contention a considerable degree of plausibility. As a general proposition, however, there

is also plausibility in the contention that it works no improper hardship on the milk distributing industry of Toledo to require it to make the same premium pay arrangements as there are made by industry generally in that area when this is necessary to settle a labor dispute in the milk industry certified to the National War Labor Board as capable of leading to "substantial interference with the war effort." After all, this industry is drawing its labor from the same labor market area as those industries which, in a measure sufficient to constitute the area practice, are carrying out the premium pay provisions ordered in this case.

It should, of course, be noted that the National Board dealt with the premium pay issue in this case not as an initial proposition but as an issue on appeal from its Fifth Regional Board. The question before the National Board, therefore was not whether or not the Regional Board had decided the issue as wisely as it might conceivably have been decided but whether or not by its decision the Regional Board had made a mistake warranting appeal to the National Board on one or the other of the relatively narrow grounds, so often recited in Board opinions, on which appeals are accepted. A majority of the Board could find that no such grounds had been established and therefore affirmed the decision of the Regional Board.

Dissenting Opinion of Employer Members

June 22, 1945

OVERTIME PAY

MALONEY and FALES, Employer Members:—This case presented, among other matters, a question of premium pay for work on the sixth (6th) and seventh (7th) days worked in the workweek and for work on six holidays to be designated by the parties. In its directive order of Jan. 19, 1945, the Fifth Regional Board had ordered the companies concerned to pay time and one-half for work on the sixth (6th) day worked in the workweek and on each of six (6) holidays and doubletime for work on the seventh (7th) day worked in the workweek. It will be noted that the provisions of this part of the directive order are, in fact, the provisions of Executive Order 9240, from which the companies concerned were specifically exempt as part of the milk processing industry, by the Secretary of Labor on Oct. 22, 1943. In making such exemption, the Secretary of Labor found that:

"* * * the nature and exingencies of operations in this industry make it necessary and advisable for the successful prosecution of the war to determine that the provisions of Executive Order 9240 shall not apply to the milk processing industry as defined herein."

It is thus obvious that the person empowered to interpret and apply Executive Order 9240 objectively and in the interests of the war effort determined contrary to the National War Labor Board.

In making its decision, the Regional Board stated that the basis of the decision was "area practice." Regional industry members and one public member dissented from this order stating, among other things, that neither area nor industry practice would dictate the Regional Board's decision. There is no showing pro or con on this question in the National Board files.

It is our opinion that the decision of the National Board to uphold the decision of the Regional Board in this matter is contrary to fundamental War Labor Board philosophy and policy and, in addition, represents a dangerous precedent that might well result in the application of Executive Order 9240 provisions to exempt industries on a very extensive basis.

Executive Order 9240 was created by the President to (a) facilitate round-the-clock war production, (b) discourage absenteeism, and (c) to increase worker efficiency in time of war. Its interpretation and application were made the exclusive responsibility of the Secretary of Labor, who determines which industries should be subject to its provisions and which should not in the best interests of the war effort. The milk processing industry was placed in the latter category. The National War Labor Board has stated in its policy manual that the power to interpret and apply Executive Order 9240 is that of the Secretary of Labor, presumably in recognition of the need for a centralized control and administration of the Order promulgated to further the war effort and to avoid contrary and confusing rulings on the subject. However, the majority of the Fifth Regional Board and the majority of the National Board have formed their opinion in this case on the

reasoning that Executive Order 9240 is one thing that overtime provisions are something else even though such provisions may be identical to those contained in Executive Order 9240. Using this rather fine differentation, it follows under Board policy that adjustments in overtime may be effectuated by a showing that area or industry practice is such as to justify these adjustments. In the instant case, "area practice" is alleged to be this justification, but, assuming it is, the end result contradicts the position of the Secretary of Labor and, from the Secretary's standpoint, as stated in the exemption order of Oct. 22, 1943, would impair the successful prosecution of the war.

In using "area practice" as the criteria to justify this decision, the Board has utilized, in our opinion, a synthetic standard. It may be that in the Toledo area the existence of Executive Order 9240 provisions is sufficiently prevalent as to characterize such provisions as "area practice." However, it is important to analyze this "area practice." In the first place, it is very probable that the "area practice" has developed as a result of the imposition of Executive Order 9240 upon the many Toledo war industries. In other words, the "area practice" has not developed as an area practice predicated upon normal, sound labor relations but rather upon the incidence of a temporary, wartime national policy. In the second place, this temporary national policy was imposed irrespective of area practice to meet and solve specific war effort problems. In this character, it cannot in our opinion be properly used as a sound "area practice" yardstick. It is, on the contrary, a national emergency measure applied discriminately and for a purpose by the Secretary of Labor. Indiscriminate application of the provisions of the Order for purposes other than those intended by the Order would be unfair to the companies involved and entirely out of keeping with the purposes of the Order.

Consequently, we believe that application of the Board's "area practice" criteria in the instant case is improper, unrealistic, and inequitable.

It is probably clear from the foregoing that we believe that the Regional Board orders in this case should have been vacated. We submit that the Board policy application of "area practice" has been improperly and unfairly construed since in the instant case the "area practice" used was purely synthetic and not characteristic of the basic practice in the area except as imposed by a Presidential Order which had as its purpose discriminate application to specific industries and discriminate nonapplication to other industries in the light of the war interests. We also believe that the companies concerned are victims of the Board's tendency to legislate into existence more liberal and costly policies than could be justified by sound collective bargaining or competitive practice. This tendency in itself is obviously unstabilizing, and it is ironical that the agency charged with the responsibility for stabilization should create instability through its orders, as is the case in the instant matter.

DOUGLAS AIRCRAFT CO., INC.—

Decision of National Board

In re DOUGLAS AIRCRAFT COMPANY, INCORPORATED [Park Ridge, Ill.] *and* UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF THE UNITED STATES AND CANADA, LOCAL 697 (AFL), Case No. 111-9485-D; SAME *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, CHICAGO CARPENTERS DISTRICT COUNCIL (AFL), Case No. 111-9486-D; SAME *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND HELPERS OF AMERICA, LOCAL 782 (AFL), Case No. 111-9487-D; SAME *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-134 (AFL), Case No. 111-9488-D, July 24, 1945 (made public Aug. 4, 1945).

PREMIUM WAGE RATES—Computation of hours worked—Days on which company fails to provide full schedule of work

For purposes of determining obligation to pay time and one-half for work after first five days of workweek, employer should count as full workday any day on which work is not made available to employee where employer has agreed to such rule in computing sixth day of workweek but objects to application for purpose of computing seventh day of workweek.

For other rulings see Index-Digest 140.405 and 140.502 in this or other volumes.

Unanimous decision of Board adopting recommendation of National Airframe Panel. Public members

concurring: Lewis M. Gill and Jesse Freidin. Labor members concurring: James A. Brownlow and Carl J. Shipley. Employer members concurring: Earl Cannon and Charles Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions shall govern the relations between the parties.

The parties shall adopt the following provision:

"Whenever the Company fails to make eight (8) hours of work available (6½ hours on the third shift) on any one of the first five (5) scheduled workdays in the workweek, then, and in that event, in determining whether or not any employee affected thereby has worked more than forty (40) hours for the purpose of computing time and one-half under the provisions of Sec. 2 of Art. V hereof, it shall be deemed that any such employee shall have worked eight (8) hours on the day on which the company so failed to make work available."

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intentions of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the National Airframe Panel

May 2, 1945

BACKGROUND

The Douglas Aircraft Company, Inc., at Park Ridge, Ill., is engaged in the production of C-54-A transport aircraft for the United States Government. The total number of employees at the Park Ridge plant is approximately 16,000. The present cases involve approximately 102 employees represented by the International Brotherhood of Electrical Workers, 138 represented by the United Brotherhood of Carpenters and Joiners, 55 represented by the United Association of Journeymen, Plumbers, and Steamfitters, and 23 represented by the International Brotherhood of Teamsters, Chauffeurs, and Helpers, all affiliated with the American Federation of Labor.

The four unions were certified by the National Labor Relations Board as the collective bargaining agencies for their respective groups in December 1943. The parties reached agreements on the majority of the provisions of their first collective bargaining agreements. Those issues which were not settled by agreement were certified to the National War Labor Board by the Secretary of Labor on July 15, 1944. A hearing in the four cases was held before the National Airframe Panel on Nov. 9, 1944.

The present report of the Airframe Panel is an interim report only. The wage issues and other closely related issues, which include wage rates, apprenticeship plan, definition of construction work, review committee for setup rates, and safety measures, will be considered in a later report. There is presently pending before the Airframe Panel another case involving the Chicago plant of the Douglas Aircraft Company, Inc. A proper disposition of the wage issues in all the cases requires that they be considered together.

The agreements reached by the parties on the following questions will be disposed of in a ruling to be issued in the near future:

(1) Overtime provision for the sixth day of the workweek,
(2) Incomplete days worked, and
(3) Emergency call-out time.

ISSUES

This interim report covers the following issues which are in dispute in the four cases:

(1) Union security, and
(2) Overtime provision for the seventh day of the workweek.

1. Union Security

The unions have requested a provision in their agreements requiring all present employees who are members of the union to remain members and all new employees to become members of the union as a condition of employment.

The unions have argued that the facts of these cases justify a union shop rather than the maintenance-of-membership provision. In support-

of their demand, the unions contended that they have union-shop contracts with other companies in the Chicago area, for example, the Electrical Contractors' Association of Chicago and the Air Conditioning Contractors' Chicago Association; that the unions can best carry out their obligations if they have complete jurisdiction over all employees; that the constitutions and by-laws demonstrate conclusively the responsibility and integrity of each of the unions; that during the war period they have kept their pledge not to instigate strikes or stoppages and have always cooperated so that the employees under their jurisdiction have given their best efforts to the production of war materials.

The company is "unequivocally opposed" to the form of union security proposed by the unions or to any other type of union shop or maintenance of membership. No maintenance of membership should be awarded, according to the company, where the unions have had, as in these cases, a short period of collective bargaining, where there has been no company hostility to unions, or where there is no rival union.

A majority of the panel, industry members dissenting, recommend that the collective bargaining agreements include, in accordance with Board policy and in the absence of any showing that the unions have not been responsible, the standard maintenance-of-membership provision with the 15-day period during which present members of the union may resign. The policy of the National War Labor Board against awarding the closed or union shop in the absence of a previous agreement containing such a provision is well established. In the panel's opinion, there is no justification for departing from that policy.

The following provision is recommended:

"(a) All employees who, on (15 days after the date of the Board's order), are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

2. Hours of Work.

The company has agreed with the unions to include in the collective bargaining agreements the following provision with respect to overtime payments for work performed on the sixth day of the workweek:

"Whenever the Company fails to make forty (40) hours of work available to a full-time regular employee during the first five (5) scheduled work days of the employee's workweek

(third shift thirty-two and one-half (32½) hours), then, in that event, each such employee affected thereby shall be paid time and one-half for work done on the sixth day worked in the workweek, it being agreed that, in computing the sixth day worked in the workweek, each day of the first five (5) scheduled workdays of the workweek on which the Company fails to make eight (8) hours (third shift six and one-half (6½) hours) of work available shall be counted as a day worked."

The company doubted the propriety of this provision under Executive Order No. 9240 [8 War Lab. Rep. XXVII, 26 War Lab. Rep. No. 3, IX; WCDS 20], and, on Nov. 22, 1944, inquired of the Department of Labor whether the provision complied with Executive Order No. 9240. The company was advised by letter dated Dec. 4, 1944, from Mr. Robert T. Amis, special assistant to the Secretary of Labor, that the proposed provision did not conflict with the Executive Order.

The company and the unions, while in agreement with respect to work performed on the sixth day, are in dispute with respect to work performed on the seventh day. The unions originally requested the following provision:

"Whenever the Company fails to make forty (40) hours of work available to a full-time regular employee during the first five (5) scheduled workdays of the employees' workweek (third shift 32½ hours), then, and in that event, each such employee affected thereby shall be paid doubletime for work done on the seventh day worked in the workweek, it being agreed that, in computing the seventh day worked in the workweek, each day of the first five (5) days of the workweek on which the company fails to make eight (8) hours (third shift 6½ hours) of work available shall be counted as a day worked."

The company rejected this proposal and contended that it was clearly in conflict with Executive Order No. 9240. Moreover, the company argued that no similar provisions were contained in any of its other collective bargaining agreements with other unions and that the proposed provision was contrary to the practice in the airframe industry.

The unions have now modified their request and propose that time and one-half, rather than doubletime, be paid for work performed on the seventh day. Thus, under the union's latest proposal, the company would pay time and one-half for work performed on the seventh day, and, for the purpose of determining the seventh day, one or more of the first five days of the week upon which the company fails to provide work will be counted as a day or days worked.

The union's modified proposal was submitted to the company on Nov. 27, 1944. The proposal was not acceptable to the company. The panel is therefore on notice that the company has rejected the revised proposal, but the company's arguments in its brief and at the hearing were directed to the original proposal, which would have required the payment of doubletime.

It is the position of the unions that, since the company has agreed to count the first five days of the workweek as days worked, whenever the company fails to provide work on those days, for the purpose of computing sixth day overtime, the company should, in order to be consistent, apply the same principle for the purpose of paying overtime for the seventh day of the workweek. The unions argued that the company's position would result in discrimination and discontent among the workers. For example, an employee might be told not to report for work on Monday and Tuesday because the company was unable to furnish him with work. The employee might then be required to work on Wednesday, Thursday, Friday, Saturday, and Sunday of the same week. Under the agreement reached by the parties, the employee would receive time and one-half for all work performed on Saturday, the sixth day of the workweek, but would receive straight time only for work performed on Sunday, the seventh day of the workweek. The unions argued that such a situation would be contrary to the intent and purposes, as well as the spirit, of Executive Order 9240.

The panel is of the unanimous opinion that the company's position, if upheld, would result in an illogical conclusion. As pointed out in the example given above by the union, an employee might receive time and one-half for work performed on Saturday but would receive straight time only for work performed on Sunday.

The panel does not find that the specific problem can be answered by Executive Order No. 9240. The Executive Order requires the payment of doubletime for work performed on

the seventh day of the workweek. If an employee is absent for all of one or more days, such days are not to be included in computing the seventh day. The only two exceptions are a designated holiday on which no work is performed and the case where an employee reports with the reasonable expectation of work. The amended request of the unions is for the payment of time and one-half and not doubletime. The provisions of the Executive Order are therefore not applicable to this specific case.

The panel has been advised by Mr. Robert T. Amis, special assistant to the Secretary of Labor, with reference to another case presenting a similar problem, that the Department of Labor has never specifically ruled on the question of whether it is permissible under the Order to pay time and one-half for the seventh day worked in the workweek, including as days worked for the purpose of determining the seventh day days upon which excusable absences occurred.

The Department of Labor has ruled that a day upon which an excusable absence has occurred may be counted as time worked, as distinguished from a day worked, for the purpose of determining whether overtime should be paid in order to comply with a weekly overtime provision. It is on this basis and not on a consideration of the Executive Order that the panel believes this case should be decided. The panel recommends that the following provision be included in the agreements:

"For the purpose of computing overtime payments for work performed on the seventh day worked in the workweek, each day of the first 5 scheduled workdays of the workweek on which the Company fails to make eight hours (third shift 6½ hours) of work available, shall be counted as hours worked."

The panel believes that the recommended provision in no way conflicts with Executive Order 9240 and is entirely logical in view of the parties' agreement providing for time and one-half under the same circumstances for work performed on the sixth day.

Signed by Benjamin Aaron and Philip Brayton, representing the public; Garry Cotton and Andrew Leiper, representing labor; and B. Randall Irwin and Robert W. Knadler, representing employers, subject to dissent on Issue 1.

G. F. RICHTER MFG. CO.—

Decision of National Board

In re G. F. RICHTER MANUFACTURING COMPANY [Long Island City, N. Y.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 1227 (CIO). Case No. 111-3692-D, Apr. 11, 1945 (made public Aug. 4, 1945).

VACATIONS—Prorated vacations—Industry-area practice

Regional Board's order awarding prorated vacation benefits to employees having two to four years' service is referred back to Regional Board for reconsideration in light of area and industry practice.

For other rulings see Index-Digest 205.323 in this or other volumes.

WAGES—INCENTIVE WAGE SYSTEMS—Establishment of new incentive rates

Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Existing incentive system, however, may not be changed or extended to hourly rated jobs without consent of union. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or decided by arbitrator is amended accordingly.

For other rulings see Index-Digest 114.400, 260.200, 260.600, and 60.814 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date for merit increases

Merit increases employees would have earned under directed semi-automatic progression plan should be computed and paid as of retroactive date specified in Regional Board's order. Employer is not required, however, for purpose of such computations, to credit employees with six months of service prior to retroactive date, as ordered by Regional Board.

For other rulings see Index-Digest 225.398 and 225.640 in this or other volumes

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Majority decision of Board amending decision of Regional Board II (New York). Public members concurring: Edwin E. Witte and Jesse Freidin. Labor members dissenting on acceptance of petition on vaca-

tions and incentive pay: Neil Brant and James A. Brownlow. Employer members dissenting on Pars. IA(2), the first paragraph of substituted clause in IB, and on denial of petition for review of eight issues (procedure, union security, 30-day trial period, notice of proposed layoff, wage reopening clause, wage reopening provision for overtime clause of contract, paid holidays, and wages): Russell Smith and S. Bayard Colgate.

Directive Order No. 1

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to vacations, incentive pay, and retroactivity, the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to these issues, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Second Regional War Labor Board's directive order of June 14, 1944, in this case shall govern the relations between the parties with the following modifications:

A. Vacations

(1) The matter of increasing vacations by one day per year for employees having two to four years' service is referred back to the Second Regional Board for reconsideration in the light of area and industry practice.

(2) The remainder of the Regional Board's provisions with respect to vacations are hereby affirmed.

B. Incentive Pay

The clause contained in Par. 14 (b) of the Regional Board's directive order of June 14, 1944, is deleted and the following substituted therefor:

"The existing incentive system shall not be changed during the life of the agreement except by mutual consent of the parties.

"In case of a significant change in methods in operations on particular jobs or the establishment of new jobs, the Company may establish a new incentive rate subject to appeal through the grievance procedure. A change in the method of pay in departments or occupations from a day rate or hourly rate to an incentive system shall not be made unless the parties mutually agree to such change."

C. Retroactivity

Par. 19 of the said directive order of June 14, 1944, is hereby modified to read as follows:

Any adjustments resulting from the provisions of this directive order shall be effective as of Aug. 1, 1943.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. Action on that part of the petition for review which relates to overtime pay after 12 hours in any one day is deferred pending further study by the Board.

III. The remainder of the company's petition for review of the Second Regional War Labor Board's directive order of June 14, 1944, is hereby denied.

IV. The petition of the company which seeks review of the amendment to directive order, dated Nov. 24, 1944, will be considered at a later date.*

Directive Order of Regional Board II (New York)

June 14, 1944

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Wording of Introduction to Contract

The request of the union that the wording of the introduction to the contract shall be changed to eliminate

* Ed. Note: See 26 War. Lab. Rep. No. 3, XXII.

the words "* * * as ordered by the National War Labor Board" is hereby denied. The aforesaid phrase shall be included in the contract between the parties.

2. Coverage of Contract

The contract shall not apply to the general manager, foreman, subforeman, sales force, clerical staff, and watchman.

3. Union Security

(a) The union is awarded the standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 27, 1943 [12 War Lab. Rep. XXVIII; WCDS 321].

(b) The company shall deduct from their wages and turn over to the proper officers of the union the initiation fees and union dues of all union members.

4. Overtime

(a) The company shall pay at the rate of time and a half for work performed in excess of 8 hours in any one day and 40 hours in any one week.

(b) The company shall pay at the rate of time and a half for the sixth day worked in a regularly scheduled workweek and doubletime for work performed upon the seventh day worked in a regularly scheduled workweek.

(c) The company shall pay at the rate of doubletime for work performed in excess of 12 hours in any 1 day.

(d) The company shall pay all pieceworkers for overtime on the basis of their earned rate.

In accordance with the recommendations of the panel in the above case, in so far as it is practicable, overtime work shall be divided equally among employees performing similar work.

In the event that there is a substantial change in the national wage stabilization policy, either party may reopen and renegotiate the issue of overtime pay in conformance with such policy.

5. Computation of Overtime

(a) Eight hours per day, 5 days per week, and 40 hours per week shall constitute the workday and workweek.

(b) For the purpose of determining what constitutes the sixth day of work in any week, any day on which an employee has been laid off or on which he is absent for a proper cause shall be granted as a day worked. As used herein, the term "laid off" shall not include any disciplinary layoffs for violation of any shop rules. "Proper cause" shall include reasonable absence for the following reasons only:

1. Death in the immediate family;

2. Illness proved by medical certificate or otherwise proved to the satisfaction of the company;

3. Absence due to actual attendance in response to summons before agencies of the Selected Service Administration;

4. Absence on any of the six annual holidays herein provided upon which the plant is closed;

5. Any other cause deemed proper in the discretion of the company.

(c) Should the company be forced to close completely or partially because of fire damage or other forces beyond its control, such days of absence or layoff shall not be counted as days worked in determining the sixth and seventh day of work in a given workweek.

(d) The company shall be guided by Executive Order 9240 [8 War Lab. Rep. XXVII; 26 War Lab. Rep., No. 3, IX; WCDS 20], as officially interpreted, in counting days of absence as days worked for the purpose of determining what constitutes the seventh day of work in any week.

6. Holidays with Pay

The request of the union for eight holidays with pay is hereby denied.

Employees shall be entitled to the following six annual holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Employees shall receive compensation for such holidays, although not worked, at straight-time rates except that employees shall forfeit their right to any compensation therefor if, at the request of the Government, they are regularly scheduled to work on such holidays and fail to report for work without reasonable excuse.

7. Trial Period

(a) The company shall have a period of 30 days in which to determine the fitness of a new employee for the work assigned, after which period the employee shall be considered a regular employee with seniority retroactive to the date of his hiring.

(b) During the trial period, the company may discharge an employee for inability to perform properly work assigned.

(c) After the trial period, the employee may be discharged only for cause.

(d) The union shall not have the right to contest the discharge of the employee during the aforesaid trial period.

(e) The union shall have the right to challenge the propriety of a discharge of any employee after the completion of his trial period. In the event that there is a disagreement between the company and the union as to the propriety of such a discharge, the matter shall be settled in accordance with the grievance procedure provided in th contract, including arbitration.

8. Seniority

(a) The company shall have the option of giving three days' written notice of proposed layoffs to the affected employees or two days' pay in lieu of such notice.

(b) At the time that the contract between the parties is consummated, in accordance with the provisions of this order, the company shall furnish the union with a complete, up to date list of all employees, indicating the name, length of service, and wage rate of each employee.

The company shall notify the union in writing of any changes in the aforesaid list.

9. Wages

(a) The company shall grant a general wage increase of 7½ cents per hour.

(b) The company shall institute the following rate ranges for the job classifications set forth below:

Job Classification	Hourly Rate Range	
Milling Machine B	$ .80	$ .94
Milling Machine C	.60	.70
Turret Lathe A	.96	1.12
Turret Lathe C	.60	.70
Assembler A	1.04	1.22
Assembler C	.72	.86
Assembler D	.60	.70
Polisher & Buffer A	.87	1.02
Polisher & Buffer B	.72	.86
Polisher & Buffer C	.60	.70
Plating B	.72	.86
Plater's Helper	.60	.70
Grinder—Rough	.66	.78
Janitor	.55	.65
Watchman	.55	.65
Blacksmith A	1.04	1.22
Blacksmith B	.87	1.03
Trades Helper	.66	.78
Punch Press C	.66	.78
Punch Press D	.60	.70
Toolmaker D	.80	.94

(c) The company shall pay a minimum hiring rate of 55 cents per hour. Thereafter, progressions within the above ranges shall be in accordance with the following principles:

1. The company and the union shall by agreement or by arbitration within thirty (30) days of the date of this order establish standards of performance which shall fairly reflect the efficiency, skill, and production requirements which should be met by employees of various classifications.

2. At quarterly intervals, each employee who has been employed throughout the preceding quarter in a classification having a rate range maximum of $1.04 or less shall be given a wage increase of five cents (5¢) per hour until he has reached the maximum rate for the occupational classification in which he was placed unless in the judgment of the company he has not satisfied the standards of performance established as above. In the latter case, the company shall immediately notify the employee in writing that the increase will not be granted and the reasons for withholding it. If the employees is not satisfied, the matter shall be dealt with in accordance with the regular grievance procedure.

3. At quarterly intervals, each employee who has been employed throughout the preceding quarter in a classification having a rate range maximum of more than $1.04 shall, subject to the same limitation and procedure set forth in Par. 2, be given a wage increase of five cents (5¢) per hour until he has reached the midpoint of the range. Thereafter, such employees shall be the subject of quarterly consideration by the employer for merit adjustments in their rates up to the tops of their respective rate ranges. A dispute as to whether an employee whose rate is thus reviewed should or should not receive a further merit step increase, in accordance with the standards established as above, is to be resolved through the regular grievance procedure

4. The total of the wage adjustments under the above provisions shall not exceed an overall average of ten cents

(10¢) per hour in any 12-month period commencing Aug. 1 of one year and terminating July 31 of the next year.

5. Quarterly review periods shall be deemed to terminate as of July 31, Oct. 31, Jan. 31, and Apr. 30 of each year.

10. Call-In Pay

Any employee called in for work by the company on any day shall receive at least four hours of employment or four hours' pay at his base rate.

11. Night-Shift Bonus

The company shall pay a night-shift bonus of five cents per hour for work performed on the second shift and of ten cents per hour for work performed on the third shift.

12. No Reduction in Pay

(a) There shall be no reduction in wage rates for the duration of the contract between the parties.

(b) No employee shall be transferred to a lower rated job at a decrease in pay unless he agrees to such transfer. Any dispute arising from the application of this provision shall be subject to grievance procedure.

13. Equal Pay for Equal Work.

To the extent that women replace men in jobs and perform work of quantity and quality comparable to that performed by men in those jobs, the employer shall pay women and men, without distinction based on sex, at the same wage rates. Existing rate differentials as between jobs normally performed by men and those normally performed by women shall be maintained except as, by job evaluations to be approved by the Board on application, intra-plant inequalities may require correction.

14. Incentive Pay

(a) In accordance with the recommendation of the panel in the above case, the following clause shall be incorporated in the contract between the parties:

"Employees working on incentives shall receive, for each hour worked, either their base rate or their incentive earnings for that hour, whichever is higher."

(b) In accordance with the recommendation of the panel in the above case, the following clause shall be included within their contract by the parties:

"The employer shall not revise, modify, or change the present incentive system nor introduce any new incentive rates without negotiation with and the consent of the Union. In the event the employer and the Union are unable to agree upon any revision, modification, or change, the matter shall constitute a dispute and shall be settled by arbitration in accordance with the grievance procedure set forth in the contract."

15. Reopening of Wages

In the event that there is a substantial change in the national wage stabilization policy, either party may renegotiate wage rates by giving 30 days' notice in writing to the other party.

16. Vacations

The company shall grant annual vacations with pay to its employees as follows:

(a) Employees with service of six months to one year shall receive vacations in acordance with the previous practice of the company, as set forth in the last contract between the parties.

(b) Employees with five years or more of service shall receive two weeks' vacation.

(d) Employees with one to five years' service shall receive, in addition to one week's vacation, one day for each year of service completed in addition to one year, up to two weeks' vacation.

(e) In the event that an employee does not desire to take a vacation during the war period or if the company is unable to grant a vacation to the employee, the employee shall receive the vacation pay to which he is entitled in lieu of such vacation.

Vacation pay shall be based upon pay for the regularly scheduled workweek but shall not exceed pay for 48 hours' work nor be less than pay for 40 hours' work. The parties shall apply the terminology of their last contract in regard to the base upon which earnings are determined when computing vacation pay.

If, after six months' employment, an employee leaves the employ of the company through no fault of his own, he shall be entitled to receive his accumulated vacation pay.

17. Duration of Contract

The contract between the parties shall be for one year from Aug. 1, 1943, the expiration date of the last contract between the parties. The pro-

visions of the contract between the parties shall inure to the benefit of and be binding upon the successors and assigns of the company.

18. Remainder of Contract

The remainder of the contract recommended by the panel in the above case, to the extent that the same may be agreeable to the parties, is hereby approved.

19. Retroactivity

Any adjustments resulting from the provisions of this directive order shall be effective as of Aug. 1, 1943. For the purpose of computing retroactive pay to which an employee may be entitled, employees shall be given up to six months' credit for their employment prior to the effective date of any periodic increases hereinabove provided.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree provided that the 15-day period referred to in the within maintenance-of-membership provision shall be deemed to run from the date of this order.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative; and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately operative.

Signed by Thomas L. Norton and Emanuel Stein, public members (opinion by John W. McConnell, not voting); F. J. Hammel and Joseph W. Zeller, employer members, subject to dissent with opinion (by Harry A. Clark, not voting) on union security, check-off, doubletime after 12 hours, overtime for pieceworkers, holidays with pay, trial period, inclusion of wages (seniority), application of Bijur formula, night-shift bonus, incentive pay, amount of vacation, length of contract, retroactive date, premium pay for sixth day worked, layoff notice, and application of contract to successors of company; and Frazer L. Holzlohner and Walter Payne, labor members, subject to dissent as to wording of introduction to contract and accumulated vacation pay after six months.

Opinion of Regional Board II

June 26, 1944

UNION SECURITY

McConnell, Public Member:—The industry dissenting opinion in this case takes issue with the majority on several points of the Board's decision. Industry objects to granting the standard maintenance of membership and check-off to a union which has shown itself so antagonistic to management as has this union. The only significant fact cited to support this contention is the union's protest against an Army and Navy E award being made to the G. F. Richter Co. which resulted in the award never being made. This action is considered by industry to be a clear indication of the union's irresponsibility. The public members have examined the circumstances surrounding this action of the union, and their judgment confirms the opinion of the panel that the union had reasonable grounds for its action in the unfavorable record made by the company in its labor relations. The details of this record will be found in the proceedings of the National Labor Relations Board and the Wage and Hour Division of the Department of Labor. Furthermore, this same local has participated in Army and Navy E award proceedings on at least five other occasions involving companies with which the union holds contracts. We do not agree with the industry members that the action of the union is indicative either of bad faith or irresponsibility and conse-

quently cannot be a reason for denying to the union the security of maintenance of membership and check-off.

DOUBLETIME AFTER 12 HOURS

On the second question with which the industry opinion takes issue, namely, the payment of doubletime for time worked in excess of 12 hours in any one day, the majority of the Board has accepted the recommendation of the panel. This recommendation was justified by the panel as a barrier against long workdays, which are detrimental both to productive efficiency and to human welfare. The public members concur in the general social policy which prompted the panel's recommendation. Contrary to the industry opinion, Executive Order 9240, Sec. 1-A-2, and the various interpretations thereof do not prohibit the payment of doubletime for work in excess of 12 hours. Indeed, the interpretations emphasize that the onerous or emergency character of work after 12 hours has been responsible for the incorporation of such provisions in many existing contracts, and Executive Order 9240 is not designed to disturb those contracts.

HOLIDAYS

In directing six paid holidays in this case, the majority acted with two ideas in mind. First, it is the policy of the Board to grant paid holidays consistent with the practice of the industry and area. Payment for six holidays is widely accepted in the New York area, and there is ample evidence that paid holidays are prevalent in the metal trades industry, of which this company is a part. Moreover, the union has shown that in every one of its contracts there is a provision for paid holidays. Second, the employer has habitually closed his plant on scheduled holidays during the past years, resulting in a loss of earnings to workers. This is in marked contrast to the Sklar case (111-1906-D) referred to in the industry opinion, where the panel did not recommend paid holidays "because it is more or less an academic question in this plant. The plant operates practically every holiday."

MERIT INCREASES

The final objection of the minority is directed against the provision of merit-length-of-service increases ordered in this case. The public members have set forth their policy upon and the justification of systematic increases within rate ranges in a number of previous cases, notably the Bijur Lubricating Corporation case, No. 111-2374-D [15 War Lab. Rep. 37] and the General Electric case, No. 111-3264-HO [14 War Lab. Rep. 704]. There are no unusual circumstances in the instant case which differentiate it from the Bijur case or which require aditional elaboration; although still adhering to the case-by-case approach, the Bijur formula has been found applicable to this case.

Dissenting Opinion of Employer Member of Regional Board II

June 16, 1944

UNION SECURITY

CLARK, Employer Member:—In this case it is evident that a large part of the difficulty is due to the attitude of the labor officials, particularly the business agent and legal representative, who, instead of following the principles of collective bargaining, assumed a contrary position, refused to discuss the various proposals in spite of the wish of the local's officers and members to discuss them, and insisted on his viewpoint or nothing. Further, after an award had been made to the company of Army-Navy E, took it upon themselves to advise the award committee headed by Lt. Col. Baer of the S. & S. Corps—a committee well known for its impartiality and thoroughness in making such awards—that this company was not entitled to the award and that they (the union) would not participate in the ceremony of presentation, a very strange and unusual proceeding which on the face would appear to be due to nothing but personal animus. The union agent claimed that a meeting of employees backed him in this. Such action would seem to be unbelievable but, if true, and apparently it is so, indicates not only a lack of responsibility but a direct slap at the very efficient method of the Supply Corps Committee on awards. Further, here is a plant of but 65 production employees who have had a large number of labor disturbances since the first union contract of Aug. 21, 1941. It is evident that the officials of this union have anything in mind but harmonious relations and have not even tried to smooth over their differences with the employer, and yet the majority of this Board condones such

and awards this union protection and the check-off. If there was any case where it should be denied, this is one.

DOUBLETIME AFTER 12 HOURS

Further, the majority agree to doubletime after 12 hours per day in spite of Executive Order 9240, Sec. 1-A-2. Although this does not affect this employer to any great extent at the moment as he is not working his men over 12 hours, it does violate an Order of the President for the following reasons:

1. The union has not presented any facts indicating the necessity for such additional compensation.

2. The work is not of such laborious nature as to come within the concept of the Department of Labor interpretation.

3. The fact that the company does not work over 12 hours a day and has no present reason to expect such work places a hardship on the employer if some unforeseen and special condition should arise making it necessary to work one or two days on such a basis. It is our contention that the union's demand in this case should be denied.

HOLIDAYS WITH PAY

The majority ruling in allowing six holidays with pay is contrary to Board rulings in the Sklar Mfg. Co. case, which is the only other comparable company in this industry and area. No proof was given that it was the general practice in the industry or area. The company had no paid holidays when not worked in the past and had agreed to time and one-half for holidays worked. This ruling should have been disallowed as contrary to Board practice.

TRIAL PERIOD

Previously the trial period had been two years but was reduced to four months by Board order and now [it] again reduces it to 30 days. Evidently the panel confused trial period and seniority. Reducing the trial period so drastically in such a short time is distinctly unfair to management. These are skilled jobs and require longer than a 30-day trial period. The four-month period is not enough, but, as it is now in force, [it] should be left intact. The employees' seniority is not jeopardized by the four-month period.

AUTOMATIC INCREASES

While the system in this case is partially automatic, it still takes from the employer the inherent right to judge the merit of an increase for his employees and places good and poor workmen in the same place with no redress for the better workmen.

The majority rulings in this case are largely more liberal than allowed in the Sklar case, which is comparable, and in most instances there is no definite or valid reason given for the changes. It is merely a case of giving a union all the fringe issues it asked for and is in reality a series of hidden increases.

Report and Recommendations of the Panel *

January 1944

THE PARTIES TO THE DISPUTE

The company involved in this case is the G. F. Richter Manufacturing Company of Glendale, Long Island, N. Y. The company employs approximately 80 production workers and manufactures surgical instruments. Some 90 per cent of the company's output is for the United States armed forces.

The union involved in this case is the Machine and Instrument Local No. 1227 of the United Electrical, Radio & Machine Workers of America (CIO). This union has had contractual relations with the company since Aug. 21, 1941, at which time an initial contract became effective.

BACKGROUND OF THE DISPUTE

The relations between the company and the union from the very beginning to the present issue have been difficult and turbulent. The first agreement between the parties became effective Aug. 21, 1941, and resulted from the termination of a strike against the company which began on June 26, 1941. The company's refusal to bargain collectively with this union led to the strike action.

This first agreement expired on Aug. 1, 1942. The company and the union entered upon negotiations for a new contract but failed to reach agreement, and the dispute was referred to the United States Conciliation Service. Repeated conferences were held before commissioners of the Con-

* Ed. Note: Only that portion of the panel report relating to overrule after 12 hours, revision of incentive pay system, vacations, and retroactivity is reproduced.

ciliation Service. Again no agreement was reached, and the company demanded a hearing by a tripartite panel of the National War Labor Board.

In December 1942 a tripartite panel of the National War Labor Board heard the arguments of both parties on eight disputed issues involving wages and union security. The panel issued a decision which was appealed in part by the company. A directive order was issued by the National War Labor Board, Second Region, on May 19, 1943, and a new agreement was entered into by the parties on June 9, 1943, retroactive to Aug. 1, 1942. This agreement expired on Aug. 1, 1943.

The present dispute arose when the company and the union failed to reach a common basis for the renewal of their previous agreement. On July 14 or 16, 1943, the union presented the company with a copy of the union's proposals for the renewal of the contract. The main issues were: Wages, retroactive date, union shop, and duration of contract.

On July 22, 1943, a conference was held at which the company proposed renewal of the previous agreement. The company's counterproposal was submitted to the union membership employed by the company and was rejected. The company was advised of this on Aug. 3, 1943, and the matter was submitted to the United States Conciliation Service. Commissioner J. L. Fenton was assigned to the dispute, and a conference was held on Aug. 12, 1943. No agreement was reached.

On Sept. 7, 1943, the case was certified to the National War Labor Board.

ISSUES

The union requests:

1. The wording of the introduction to the contract shall be changed to eliminate the word "* * * as ordered by the National War Labor Board";
2. A union shop;
3. Compulsory check-off;
4. Improvement in the overtime clause;
5. Eight (8) holidays with pay;
6. A thirty (30) day trial period;
7. Seniority—
   (a) To begin at the expiration of the trial period outlined in Issue 6,
   (b) Three (3) days' notice of proposed layoffs,
   (c) A seniority list to be provided to the union by the company every three (3) months, indicating the names, length of service, and wage rates of all employees;
8. Wage adjustments—
   (a) The establishment of job classifications,
   (b) The establishment of rates of pay for such job classifications,
   (c) An overall increase of 15 cents per hour and a proportionate increase to employees working on incentive,
   (d) An increase in the minimum hiring rates,
   (e) Automatic periodic increases,
   (f) Revision of company's present policy for incentive pay,
   (g) A no-reduction-in-pay clause,
   (h) Provisions to reopen wage question,
   (i) Call-in pay,
   (j) Night-shift bonus,
   (k) Equal pay clause for men and women for equal work;
9. Vacations—
   (a) One (1) day's vacation with pay for each month of service up to two (2) full working weeks,
   (b) Employees whose services are terminated for any reason whatsoever shall receive with their final pay their accumulated vacation pay;
10. The agreement shall be fon one (1) year with an automatic renewal clause;
11. This agreement shall be retroactive to the expiration date of the previous agreement, Aug. 1, 1943; and
12. That the exclusion of watchman from the coverage of the contract be eliminated.

[Ed. Note: Issues 1 to 3 and those portions of Issue 4 relating to time and one-half after 8 and 40 hours and for Saturday and overtime for pieceworkers, discussed in the panel report at this point, are omitted.]

4. Overtime

Union's Position

The union requests an improvement in the overtime clause to provide the following:

Doubletime for work performed on Sundays and holidays and all overtime in excess of four (4) hours in any one day or ten (10) hours in any one week.

Company's Position

The company cannot accept the union's proposal of granting doubletime for work performed in excess of four (4) overtime hours in any one

day or ten (10) hours in any one week because:

1. No one in the industry pays such exorbitant rates.

2. It is a union attempt to secure an increase in wages.

3. The National War Labor Board has not the right to impose more onerous conditions upon this company than it has placed upon its competitors.

Discussion

The union has made a request for doubletime to be paid in excess of four (4) hours of overtime in any given day or ten (10) hours in any given week. The majority of the panel believes that there is merit in the first part of the union's request. A workday unduly prolonged will in short order benefit neither the employee, the company, nor the war effort. It is the opinion of persons concerned with plant efficiency operation that an employee begins to tire more rapidly after ten hours of work. The productive capacity of such an employee diminishes out of all proportion to the work performed. It would seem, therefore, that some restriction is desirable in the interest of all concerned. The health of the Nation's workers should be of primary concern to industry and the Government as well as to labor.

Recommendation

Therefore, the majority of the panel is in favor of granting doubletime pay to all work performed in excess of 12 hours in any given day. In operation this will mean eight hours at straight time, four hours at time and one-half, and doubletime thereafter.

[ED. NOTE: Issues 5 to 7 and 8 (wages) (except for revision of incentive pay system), discussed in the panel report at this point, are omitted.]

8 (f) Incentive Pay

The union has requested that the following additions and modifications be made in the incentive plan prevailing in the plant:

That there shall be no revision or modification of the present incentive system or introduction of any new incentive rates without negotiation with and the consent of the union.

Recommendation

The majority of the panel believes that such request is in complete accord with the policy of the Board and therefore recommends that the following provision be incorporated in the contract:

"The employer shall not revise, modify, or change the present incentive system nor introduce any new incentive rates without negotiation with and the consent of the Union. In the event the employer and the Union are unable to agree upon any revision, modification, or change, the matter shall constitute a dispute and shall be settled by arbitration in accordance with the grievance procedure set forth in the contract."

9. Vacations

Union's Position

Employees shall be entitled to one (1) day's vacation with pay for each month of service up to two (2) full working weeks.

Employees whose services are terminated for any cause whatsoever shall receive with their final pay their accumulated vacation pay.

Company's Position

The company does not wish to make any change in the present contract.

It bases its position on the following:

A. The matter was thoroughly presented to the National War Labor Board and resulted in the clause in the expiring agreement.

B. The company sees no reason for liberalizing its present policy of one week's vacation with pay inasmuch as most firms in the industry do not grant vacations with pay. Those that do grant vacations with pay do not have a broader base.

C. This is again a subterfuge on the union's part to obtain a wage increase for their members which they cannot justify under the conditions set forth by the National War Labor Board.

D. The company opposes granting accumulated vacation pay for employees who terminate their connection with the company. The object of vacations with pay is to keep employees with the company. It is an incentive for the protection of the company. To grant this request would encourage employees to seek other jobs during the year. This would increase the company's turnover and manpower problem.

E. The Board has held that to liberaize vacations in wartime is a luxury.

Discussion

There is a sharp difference between the company and the union on this issue. The company contends that its policy is as liberal as any in the industry. In referring to "the industry," the company means the surgical instrument industry. The union contends that this definition is not correct and too narrow. It refers to the industry as the metal trades industry, as designated by the National War Labor Board:

On the basis of the union reference, a survey will show that the company's policy is not over-generous. In September 1942, the union reported that some 335 plants involving more than 300,000 workers were receiving vacation benefits up to 2 weeks in less than 5 years. The union points out that the number of plants and workers affected has substantially increased since that time.

The principle of paid vacations is well established in the metal trades industry and is constantly being extended. It is the opinion of the majority of the panel that this company should not exempt itself from such progress. Its employees are working long hours each week and making a notable contribution to the winning of the war.

Recommendation

Employees shall be granted vacations with pay on the following basis:

Six (6) months' employment or more —three (3) days (24 hours); one (1) year's employment—one (1) week (40 hours); and one (1) day (8 hours) for each additional year, up to two (2) weeks for five (5) years' employment or more.

Upon termination of employment, an employee shall be paid the amount of vacation pay accrued to him during the vacation year.

Further vacation provisions are contained in Secs. 2, 3 and 5 of Art. VI of the contract.

[Ed. Note: Issue 10, discussed in the panel report at this point, is omitted.]

11. Retroactivity

Union's Position

The new agreement shall be retroactive to the expiration date of the present agreement.

Company's Position

The company presented no written argument against the retroactive demand of the union. However, in discussion, it voiced its opposition to the principle of retroactive pay.

Discussion

The policy of the National War Labor Board is clear regarding the retroactivity of contracts. In its "Manual of Board Wage Policies, National War Labor Board, Region II," the National War Labor Board position is set forth. In line with this policy, the majority of the panel recommends its retroactive award.

Recommendation

All of the provisions of the contract and the provisions of this report shall be effective as of the expiration date of the previous agreement, namely, Aug. 1, 1943.

Signed by Herman Brickman, representing the public; and Irving Gilman representing labor. J. P. Dailey, representing employers, subject to dissented with opinion on Issues 2 through 11.

Dissenting Opinion of Employer Representative

Feb. 4, 1944

PRELIMINARY

I cannot concur in the reports and recommendations of the other two members of the panel in the above mentioned case. I have therefore refused to sign the report and submit herewith my opinion.

The preliminary recital and the background of the dispute are in order. It is my opinion, as an industry member, that a great deal of time, energy, and expense have been incurred in bringing this case before a panel. It will be noted in the history, every matter under discussion here was ruled on by a previous panel, by the Second Region of the National War Labor Board, and by the National War Labor Board, and that they rendered an opinion and ordered a contract entered into on May 19, 1943 (and not May 19, 1942, as stated in the panel report) and that a new agreement was entered into on June

9, 1943, retroactive to Aug. 1, 1942. This agreement expired on Aug. 1, 1943. Within six weeks after the signing of this contract, the union started negotiations for a new contract and brought up all points under discussion in the previous case and, of course, some additional items. To me, a contract of six weeks' duration can do nothing but cause disruption within a plant, and there can be very few changes in the Labor Board's policies that would make it necessary for a rehashing of all of the items previously discussed. However, the case has been certified, and the panel proceeded to hear it over a period of two full months.

[ED. NOTE: Issues 1 to 3 and 4 (except for doubletime after 12 hours), discussed in the dissenting opinion at this point, are omitted.]

4. DOUBLETIME AFTER 12 HOURS

It is not agreeable to me that doubletime be paid for overtime that exceeds four hours in any given day.

[ED. NOTE: Issues 5 to 7 and 8 (except for revision of incentive pay system), discussed in the dissenting opinion at this point, are omitted.]

8(f). INCENTIVE PAY

The recommendation of the panel that there shall be no revision or modification of the present incentive system or introduction of any new incentive rates without negotiations with the consent of the union is not agreeable to me, and I dissent, as does the company. The company does agree, and so do I, not to revise existing piece rates without the mutual agreement of the union and the company, but it does and should have the right to institute additional new piece rates for work which is not now under the incentive system. It would seem that this is a fair stand on the part of the company and that management should retain that right.

9. VACATIONS

The question of vacations was thoroughly discussed and arbitrated, and the National War Labor Board in its order of May 19 ordered that one week's vacation with pay be granted to all employees who had been in the employ of the company for a period of one year. The union requests one day's vacation with pay for each month of service up to two full working weeks.

The company is agreeable that the provision in the contract remain and proved to my satisfaction that in the surgical instrument field this is more liberal than the practice already in force. Although the union presented a schedule showing many companies that grant vacations in excess of this, it was not able to show any in the surgical instrument field even equal to this vacation schedule set by the National War Labor Board. The company takes the position that there is no reason at this time for liberalizing its present policy and that to do so under present contracts would put it in a position where it could not operate efficiently. It also states that this is a subterfuge on the part of the union to secure a wage increase.

I earnestly dissent from the panel's recommendation, and feel that the one week's vacation with pay is a liberal one.

I also dissent from the panel's recommendation that a worker separating himself from the company be paid that proportion of his vacation that he has earned. This is contrary to the original conception of a vacation and to the practices. A vacation is granted for the purpose of permitting an employee to take a rest so that he may return to his work better able to cary on for another year. The worker has no inherent right to this vacation. It is not part of his remuneration unless he stays with the company. An employee who is discharged or who quits voluntarily has absolutely no right to request or expect that part of his vacation to be paid to him.

[ED. NOTE: Issue 10, discussed in the dissenting opinion at this point, is omitted.]

11. RETROACTIVITY

If the War Labor Board sees fit to grant some of the requests, particularly as to pay, that have been asked for by the union, I heartily object to having it retroactive to the expiration date of the old contract on the basis that the company is not in a position to absorb this additional expense because the selling price of the material now in process was based on the old rates, and it would not be good and efficient management for it to have to absorb an additional burden.

Signed by J. P. Dailey, representing employers.

LEHMAN BROS.—
Decision of National Board

In re LEHMAN BROTHERS [New York, N. Y.]. Case No. 2-55173, July 11, 1945 (made public Aug. 11, 1945).

BONUS PAYMENTS—Investment firm—Bonus smaller than that approved by SSU

Employees of investment banking firm subject to WLB jurisdiction are entitled to six per cent year-end bonus but not to 15 per cent bonus proposed by company, despite fact that Salary Stabilization Unit approved 15 per cent bonus for those of company's employees subject to its jurisdiction. Fact that Treasury approves certain bonus payments is not by itself sufficient ground for approval of similar bonus by Board, and, except in unusual circumstances not deemed present in instant case, bonus paid by investment firms should be limited to six per cent of annual payroll.

For other rulings see Index-Digest 15.101 in this or other volumes.

Majority decision of Board affirming decision of Regional Board II (New York). Public members concurring: Nathan P. Feinsinger and Jesse Freidin. Employer members concurring: Hoey Hennessy, and Clair S. Cullenbine. Labor members dissenting with opinion: Neil Brant and Robert J. Watt.

Ruling

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the ruling dated Mar. 2, 1945, of the Regional War Labor Board for the Second Region, hereby takes the following action:

I. The said petition for review is hereby denied, and the said ruling of Mar. 2, 1945, is hereby affirmed and adopted as the ruling of the National War Labor Board.

Dissenting Opinion of Labor Members

July 17, 1945

BRANT and WATT, Labor Members:—We deem it necessary to state the reasons for our dissent in this case since the action of the majority illustrates a pernicious aspect of the Board's wage policy. It demonstrates to what extent the Board will adhere to a rigorously mechanical application of its wage policies regardless of the obvious injustices caused thereby.

The facts are simple enough. On the basis of its profits for 1944, estimated at $1,900,000, Lehman Brothers sought to pay its employees a year-end bonus of 15 per cent. At the time the company applied to the War Labor Board for approval as to those employees under its jurisdiction, application was also made to the Treasury for approval as to the higher-paid employees under the latter's jurisdiction. The Treasury approved the application as submitted, but the Board refuses to permit a bonus of more than 6 per cent. Since the same law governs both the Treasury and the War Labor Board, any reasonable observer may properly conclude that high-salaried employees have greater privileges under the Government's wage policies than do the low-salaried employees. That is obviously the result in this case, and no facile rationalization can conceal the gross injustice that has been created.

The majority based its ruling on an amendment to General Order No. 10, issued on Feb. 19, 1945 [22 War Lab. Rep. No. 1, X; 26 War Lab. Rep. No. 4, VIII; WCDS 538], providing that security underwriting, distributing, and brokerage companies may, without prior Board approval, pay year-end bonuses of six per cent of aggregate annual payroll subject to the jurisdiction of the National War Larbor Board. However, Regional Boards are given authority to approve bonus payments in excess of six per cent. We think exceptional circumstances were shown in this case which clearly warrant approval of the application. Evidence was given that when a staff member is hired, he is advised that salaries will be adjusted at the end of the year in the form of a bonus when the volume of business and profit permit.

The bonus has amounted to at least 10 per cent of the payroll when the annual net profits were in excess of $1,000,000, and when the profits were substantially greater, the bonus percentage was increased. The profit for 1944 was close to $2,000,000, so a bonus of 15 per cent was proposed. These facts alone are adequate to justify approval of the application. If any doubts existed, Treasury approval for

some of the employees which had already gone into effect should have dissipated the doubts. This not because the Treasury is necessarily right, but because it is intolerable to have two contradictory sets of rules applying to the same group of employees. Employee morale should not be made the victim of the failure of the War Labor Board and the Treasury to establish proper liaison. If the Board were more concerned with the practical effects of its decisions—and less absorbed in the pious and fastidious observance of self-imposed rules—absurd situations like the present case would not occur.

DOUGLAS AIRCRAFT CO., INC.—

Decision of National Board

In re DOUGLAS AIRCRAFT COMPANY, INCORPORATED [Long Beach and Santa Monica, Calif.] *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-11 (AFL). Case No. 111-11182-D [10-D-719] and 111-11183-D [10-D-720], July 10, 1945 (made public Aug. 1, 1945).

Amending 25 War Lab. Rep. 229

SENIORITY—Inter-plant seniority

Parties should negotiate issue of inter-plant seniority for older employees. Board vacates Regional order providing that, in event of layoff, employees hired prior to Dec. 7, 1941, may displace junior employees on same jobs in company's other plants in which union is bargaining agent.

For other rulings see Index-Digest 155.410 in this or other volumes.

MAINTENANCE OF MEMBERSHIP—15-day escape clause

Maintenance-of-membership provision awarded union should contain 15-day escape clause. Regional Board's order eliminating escape clause is amended accordingly, despite union's contention that protracted negotiations gave employees year's period within which to withdraw from union.

For other rulings see Index-Digest 110.340 in this or other volumes.

CONTRACTS—Wage reopening clause

Contract may be reopened on wage question in event of substantial change in national wage policy.

For other rulings see Index-Digest 37.370 in this or other volumes.

Majority decision of Board amending decision of Regional Board X (San Francisco). Public members concurring: Lewis M. Gill and Jesse Freidin. Employer members dissenting Pars. 1 and 2: Walter Knauss and Earl Cannon. Labor members dissenting on Pars. 1 (escape period), 4(a), 5, and 6: Paul Chipman and Neil Brant.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board having accepted the petitions for review of the directive order issued on Mar. 29, 1945 [25 War Lab. Rep. 229], by the Regional War Labor Board for the Tenth Region, hereby issues the following order:

1. Union Security

Par. A of the directive order dated Mar. 29, 1945, shall be amended to read as follows: *

"All employees who, on Aug. 9, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective bargaining agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Tenth Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced into joining the Union or continuing his membership therein, such dspute may be submitted for determination by an

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* ED. NOTE: The company appealed, contending that omission of the escape period violated WLB policy. The union maintained that protracted contract negotiations had provided employees with a year's period within which to leave the union.

arbitrator to be appointed by the Tenth Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Tenth Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice, [and] procedure to be followed in administering the maintenance-of-membership provision in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII, WCDS 321].

2. Saving Clause

Par. 3 of the directive order dated Mar. 29, 1945, is hereby vacated and set aside. The parties shall adopt the following provisions:

Either party may, by giving to the other party ten (10) days' written notice, reopen the question of wages provided that in the meantime the National War Labor Board or other governmental agency having jurisdiction has put into effect a wage policy substantially different from the one governing the establishment of wage rates provided for in this agreement.

3. Procedural Question

The union's petition with regard to the qualifications of the industry panel member is denied.

4. Seniority

(a) The union's petition for review of Par. C(a) of the directive order dated Mar. 29, 1945, is denied.

(b) Par. C(c) of the directive order dated Mar. 29, 1945, is hereby vacated and set aside. The issue is returned to the parties for further negotiations. Within thirty (30) days after receipt of this directive order, the parties are directed to report to the National War Labor Board with regard to the results of such negotiations.

5. Vacations and Sick Leave

The union's petition is denied.

6. Construction Work

The union's petition is denied.

The foregoing terms and conditions of employment shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the Panel *

ISSUES

1. Union Security

Union's Contention

The following union-security clause should become part of the agreement.

"This agreement being the initial collective bargaining contract between the parties, the question of harmonious relationships and fulfillment of responsibility under its terms assumes extraordinary importance.

"The Union assumes the responsibility of disciplining its members. The Company, in recognition of the union responsibility, agrees that, for the duration of the contract, it shall be a condition of continuing employment with the Company that present employees now members in good standing of the International Brotherhood of Electrical Workers shall so remain.

"Hiring of replacement or additional employees shall be within the sole judgment of the Company as to the qualification and fitness of the employee, and the Company agrees it will not discriminate against any individual because of membership in the Union.

"That the Union may assume all of its responsibilities, the Company agrees to first permit the local Union to submit applicants whom it knows to be fully qualified for the vacancy or vacancies, but the Company reserves the right to pursue its

* Ed. Note: Only that portion of the panel report relating to union security and saving clause is reproduced. For background, listing of issues, and discussion of the seniority issue, see 25 War Lab. Rep. 229 at 231.

usual hiring procedure, applications, and routine if no aplicants are promptly furnished."

Company's Contention

The status of the union should be merely the "straight recognition as provided in the certification of the Board."

Recommendation

Unanimous agreement was not reached by the panel members on the question of union security. The industry member of the panel will submit a minority report on this issue. The labor and public members of the panel herewith present their report on this issue.

After a thorough consideration of the evidence and arguments presented by the company and the union, the labor and public members of the panel recommend that the standard maintenance-of-membership clause without the escape clause should be incorporated into the new agreement. Moreover, the same members of the panel recommend that the last paragraph of the proposed union-security clause which would grant to the union the right to "submit applicants whom it knows to be fully qualified for the vacancy or vacancies" etc. be not in any wise incorporated in the agreement.

The standard maintenance-of-membership clause will give the union reasonable stability in the plant and thus relieve it of the necessity of devoting valuable time and energy to the preservation of its legally established status. Time and energy thus saved may be employed in improving the techniques of its members and in ironing out grievances and misunderstandings.

The labor and public members of the panel are convinced that the proposed union clause giving it the right to "submit applicants," etc. in reality would confer on the union no benefit in that the company, even according to the union's interpretation, would have no further obligation than the reading of the list of names submitted. Were such a clause embodied in the agreement, it could do no good and might lead to misunderstanding, grievances, and bad feeling. The company might well freely request such a list of applicants from the union. Such a voluntary request might help promote good labor relations.

8. Saving Clause

Union's Contention

The union requests the inclusion of a provision in the agreement whereby, in the event that there is a change in the wage policy controlling stabilization, the members of this bargaining unit shall be in a position to participate in possible wage increases by being permitted to reopen the wage section of the agreement.

Company's Contention

The company is opposed to the inclusion of such a clause in the agreement maintaining that the agreement is entered into for the period of one year and should continue throughout the year without reopening.

Recommendation

The labor and public members of the panel recommend the inclusion of a "saving clause" or a "reopening clause" in the agreement.

Since the National War Labor Board is giving serious consideration to the question of whether or not gross inequities are resulting from the application of the Little Steel formula with the idea, if their findings do show the existence of such inequities, of determining whether or not corrective changes consistent with the stabilization needs of the country may be made in the formula, it seems to the panel proper to recommend the inclusion in the agreement of the "saving" or "reopening" clause.

The Board, though presently working on the problem, instructs that all pending wage disputes go forward toward solution on the basis of the existing wage stabilization policy. However, seeming to realize that groups to which a new formula might apply might be precluded from benefiting from a new formula for a period of some months, the Board in a news release through the Office of War Information seems to advise the inclusion of an "appropriate provision in the contracts for a reopening of the wage question * * * ."

Again, in a resolution unanimously adopted on July 25, 1944, the Board states: "When a case has thus been processed to a final order of settlement under the existing wage stabilization policy, the parties will be asked to complete their contracts, making appropriate provision therein, if so desired, for a reopening of the wage provisions in the event of a change

in the national policy [17 War Lab. Rep. LIV; WCDS 296.]

In a word, the labor and public members of the panel are convinced that, if gross inequities exist and the National War Labor Board provides a formula for their removal, no groups should be forced to run the risk of being precluded from the application of that formula for any length of time by not being permitted to include in the agreement covering the group a saving or reopening clause. If gross inequities exist here and now and a means is at hand whereby they may be removed, they should be removed as soon as possible simply because they are gross inequities.

[Ed. Note: Issues 2, 3, 5, 4, 6, 7, 9, and 10, discussed in the panel report at this point, are omitted.]

Signed by John F. Connelly, representing the public; George Shellenberger, representing employers, subject to dissent with opinion on Issues 1 and 8; and James Cheeley, representing labor, subject to dissent with opinion on Issues 2, 3, and 5.

Dissenting Opinion of Employer Representative

1. MAINTENANCE OF MEMBERSHIP

Our country is engaged in a great war for the preservation of our freedom. Millions of our finest young men are risking their lives; many already have been expended. Billions of dollars are being and will be spent to attain victory.

While fighting as we are, for the preservation of our national freedom, it seems entirely inconsistent to take away individual rights and freedoms of our people at home unless it directly furthers the war effort.

All organizations that have become and remained great over the years utilize the voluntary principle. Should unions be an exception? As long as unions render constructive and valuable service, many workers will want to belong and remain members. But, if service or leadership deteriorates to the point that the individual feels that it is not to his interest to belong, should he be forced to remain a member at the penalty of losing his job and his livelihood?

In this case the majority are recommending the standard maintenance-of-membership clause without the escape clause. I cannot see how this will help the war effort.

This is the first year that this union has represented the employees of the particular department involved. Many of the members may not yet have had opportunity to observe how adequately they can be served by the union. Surely they should not be locked into membership without any avenue of escape.

It is urged that the Board give consideration to the company's request that the union be given "straight recognition, as provided in the certification of the Board."

8. SAVING CLAUSE

A labor contract may bring certain benefits to employees and/or the union representing them. If there are any [benefits] possible to the employer, it is only because of the guarantee of a fixed wage level for a certain period of time. How can any employer make advance commitments for sale and delivery of merchandise at a fixed price, in the manufacture of which wages are an important part, not knowing for any period ahead what his wage bill may be?

The company agrees to pay wages not less than those specified in the National War Labor Board's directive order of Mar. 3, 1943 [6 War Lab. Rep. 581], applicable to the entire southern California aircraft industry, as long as such order is in effect, either as it presently reads or as it may be amended.

Any other clause is meaningless, impractical, unworkable, and should certainly be denied.

The language of the union proposal is so indefinite that it could easily be interpreted to permit the union to open the wage question at any time the NWLB makes any slight change in wage policy. Such a condition would cause confusion and unsettlement.

Signed by George Shellenberger, representing employers.

SOUTHERN CALIFORNIA AIRCRAFT INDUSTRY—

Decision of National Board

In re SOUTHERN CALIFORNIA AIRCRAFT INDUSTRY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (CIO), and INTERNATIONAL ASSOCIATION OF MACHINISTS (AFL). Case No. 10-72-AG, Aug. 13, 1945 (made public Aug. 21, 1945).

PREMIUM WAGE RATES—Hazardous work premium—Flight premium

As compensation for additional risk, flight technicians are entitled to $1.50 per hour in addition to regular pay for all time spent in testing, adjusting, recording, and operating aircraft equipment during test flights. Minimum of $1.50 shall be paid for first ascension of any day.

For other rulings see Index-Digest 140.677 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date—Petition date

Hazardous work premium directed by Board should be made retroactive to date one month after union petitioned for establishment of such premium.

For other rulings see Index-Digest 225.343 in this or other volumes.

Majority decision of Board amending recommendations of National Airframe Panel. Public members concurring: George W. Taylor, Lloyd K. Garrison, Nathan P. Feinsinger, and Jesse Freidin. Employer members concurring: Earl J. Cannon, Lee H. Hill, S. Bayard Colgate, and Clarence O. Skinner. Labor members dissenting: Carl J. Shipley, John Brophy, Paul Chipman, and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs the following:

1. All employees covered by the Mar. 3, 1943, directive order [6 War Lab. Rep. 581], in the matter of West Coast Airframe Companies, except as provided herein, shall be compensated for all time spent in flying required in the performance of the duties of testing, adjusting, recording, and operating equipment during test flights at the rate of $1.50 per hour, in addition to their regular wages; that a minimum of one (1) hour's flight pay shall be paid for the first ascension of any calendar day. For additional ascensions on the same calendar day, flight pay shall be at the rate specified above, computed to the nearest fifth of an hour. The present flight compensation plan now in effect at North American Aviation, Inc., Inglewood plant, shall be continued in effect unless the company and the union agree to substitute the uniform plan provided for herein.

2. The above provision shall be effective as of Aug. 7, 1943.

The procedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

Report of the National Airframe Panel

June 21, 1945

BACKGROUND

The California plants of the following companies are involved in the present dispute: Consolidated Vultee Aircraft Corp., Douglas Aircraft Co., Inc., Lockheed Aircraft Corp., North American Aviation, Inc., Northrop Aircraft, Inc., and Ryan Aeronautical Co.

The employees involved are represented either by the International Association of Machinists (AFL) or the United Automobile, Aircraft and Agricultural Implement Workers of America (CIO). It is not possible to state the exact number of employees who will be affected by the final decision in this case, but the approximate number is shown by the statement of the industry that "examination of the records of the 6 companies involved reveals that during the 13-month period ending Feb. 1, 1945, a total of 937 hourly paid employees engaged in test flight work to the extent of a total of 18,055 hours." [1]

The West Coast Aircraft Committee for Region X, with the industry members dissenting, issued its Order No. 72 on Mar. 13, 1944, which provided as follows:

"It is hereby ordered that all em-

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1 Industry prehearing brief, p. 8.

ployees covered by the Mar. 3, 1943, order of the National War Labor Board, except as provided herein, shall be compensated for all time spent in flying required in the performance of the duties of testing, adjusting, recording, and operating equipment during test flights at the rate of $5.00 per hour, in addition to their regular wages; that a minimum of one (1) hour's flight pay shall be paid for the first ascension of any calendar day; that, for additional ascensions on the same calendar day, flight pay shall be at the rate specified above, computed to the nearest fifth of an hour; and that the present flight compensation plan now in effect at North American Aviation, Inc., Inglewood plant, shall be continued in effect unless the company and the union agree to substitute the uniform plan provided for herein.

"The above provision shall be effective as of July 7, 1943."

Order No. 72 was unanimously approved by the Tenth Regional War Labor Board on June 13, 1944.

On Sept. 4, 1944, acting upon an appeal submitted by the industry, the National War Labor Board with the labor members dissenting vacated Order No. 72 for the reason that the West Coast Aircraft Committee was without jurisdiction to determine the dispute.

On Oct. 11, 1944, the West Coast Aircraft Committee, with the industry members dissenting, passed a resolution requesting the National Board "to resolve the jurisdictional question in connection with Order No. 72 and to take such other actions as it may deem proper and necessary to afford relief to the petitioning parties by a definite decision on the merits of the issue as promptly as possible and eliminating, as far as possible, for the parties the burden of additional hearings and presentation of evidence.

On Dec. 27, 1944, the National War Labor Board by unanimous vote issued the following directive order:

"By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having assumed on its own motion jurisdiction over the above entitled case, hereby issues the following order: The dispute concerning the bonus payments to employees who fly on trial flights of airplanes for the purpose of testing, adjusting, recording, and operating equipment is referred to the National Airframe panel for the purpose of holding a hearing, at which all interested parties located within the Tenth Region may appear. The National Airframe Panel shall then make a recommendation to the National War Labor Board for its disposition of the merits of the dispute."

Pursuant to the directive order of Dec. 27, 1944, the National Airframe Panel conducted its hearing on Mar. 13 and 14, 1945. Representatives of the southern California aircraft industry, the United Automobile, Aircraft, and Agricultural Implement Workers of America (CIO) and the International Association of Machinists (AFL) attended the hearing. Preliminary briefs, post-hearing briefs, and reply briefs have been submitted by the industry and the unions.

JURISDICTIONAL ISSUE

It is the position of the industry that the Board, by its order of Sept. 4, 1944, vacating and setting aside the Tenth Regional War Labor Board's order of July 13, 1944, thereby directed that the issue should be heard and determined de novo. Therefore, the industry contends that, because this is a new matter, the Board is without jurisdiction. The industry argues that the Board's jurisdiction must be derived under one of the three following grounds:

"1. A joint Form 10 petition; or

"2. A dispute certified by the Conciliation Service; or

"3. A dispute threatening disruption of vital war production of which the Board may take cognizance and jurisdiction in its own discretion."

The industry states that the present dispute obviously does not fall within either the first or second ground, and to the best of its knowledge there are no facts which could bring it within the scope of the third ground. The industry therefore argues that the Board should decline to take further action and should leave to the Restudy Committee the question of hazard evaluation if there is any basis for the union's claim that the jobs have not been properly evaluated with reference to that factor.

In accordance with the policy of the Board, the panel refrains from making any recommendation or ruling on

the industry's objection to the Board's jurisdiction of this question. The industry's objection to the Board's jurisdiction is reported to the Board for such action as it deems appropriate.

POSITION OF THE UNIONS

The unions have proposed that the War Labor Board adopt General Order No. 72 of the West Coast Aircraft Committe and the Tenth Regional War Labor Board and direct that all employees covered by the Board's directive order of Mar. 3, 1943, in the case of the West Coast Airframe Companies (Cases No. 174, 307, 557, 558, 608, 609, 610, and 673) be compensated for all time spent in flying required in the performance of the duties of testing, adjusting, recording, and operating equipment during test flights at the rate of $5.00 per hour, in addition to their regular wages. The proposed provision specifies that a minimum of one hour's flight pay shall be paid for the first ascension on any calendar day. For additional ascensions on the same calendar day, flight pay is to be $5.00 per hour computed to the nearest fifth of an hour. The unions request that the proposal be made effective as of July 7, 1943.

At the hearing and in the briefs submitted by the unions both before and after the National Airframe Panel's hearing, the unions have explained in detail the history and background of the dispute between the parties over the question of flight pay.

It is the position of the unions that the Board, in referring the case to the National Airframe Panel to "make a recommendation to the National War Labor Board for its disposition of the merits of the dispute," did not preclude the panel from determining whether the West Coast Aircraft Committee and the Tenth Regional War Labor Board acted outside of their jurisdiction in issuing General Order No. 72. The unions argued that, at the time that the Board decided that the West Coast Aircraft Commitee and the Tenth Regional War Labor Board were without jurisdiction, the Board acted without the complete file before it and on the basis of an incomplete record.

The unions gave in detail the procedure which had been followed by the West Coast Aircraft Committee and the Tenth Regional War Labor Board since July 7, 1943, the date the unions first petitioned the West Coast Aircraft Committee for the establishment of a flight bonus. The unions submitted in evidence copies of correspondence between the West Coast Aircraft Committee and the Regional War Labor Board with reference to the question of jurisdiction.[2] The final communication was a letter, dated Feb. 25, 1944, to the chairman of the West Coast Aircraft Committee from the chairman of the Tenth Regional War Labor Board in which the committee was instructed to proceed to consider the issue of the bonus payment, "and in the course of its consideration to determine whether or not the matter is properly before the West Coast Aircraft Committee, which determination shall be subject to review by the Tenth Regional War Labor Board in accordance with its procedure."[3]

It is the unions' position that every effort was made to settle the jurisdictional question at the commencement of the proceedings and that the jurisdiction of the West Coast Aircraft Committee was never seriously challenged by the industry. The unions believe that the case should not be considered as a "new case," but rather that the Board should find that the West Coast Aircraft Committee and the Tenth Regional War Labor Board had acted within their jurisdiction in issuing General Order No. 72. The unions argued that "the question of proper jurisdiction of the West Coast Aircraft Committee was decided by the Tenth Regional Board when they approved General Order No. 72 unanimously after a full and complete hearing of the parties to the case."[4]

The unions recited that the case had been referred to the subcommittee of the West Coast Aircraft Committee which, after a thorough investigation, submitted a report to the committee which in turn scheduled a public hearing at which both sides had an opportunity to examine and cross-examine witnesses. However, industry did not, according to the unions, make any presentation. The unions introduced in evidence the minutes of the West Coast Aircraft Committee for Mon., Mar. 13, 1944, at which time the committee voted to approve General Order No. 72 for the purpose of showing that the industry members of the committee had not been opposed to flight pay.

It is, therefore, the unions' first argument that the panel is not pre-

2 Union Exhs. B, C, D, and E.
3 Union Exh. E.
4 Preliminary brief of labor, p. 3.

cluded by the National Board's directive order of Sept. 4, 1944, which instructed the panel to hear the dispute "on its merits," from finding that the West Coast Aircraft Committee had acted within its jurisdiction in issuing General Order No. 72 and that the panel should so find and recommend to the Board.

The unions have not limited their arguments to this point but have contended that there does exist a hazard in the duties of the hourly paid employees who test, adjust, and operate aircraft equipment in test flights for which there is no compensation. The unions' arguments may be summarized in brief under five headings:

1. Occupational Hazard

"The hazards confronting these workers are far in excess of the hazards on similar ground duties and in addition to those risks normally found on the flying fields, such as flying propellers, falls from standing planes, and dangers from taxiing airplanes."

Under this heading the unions have contended that the employees who would receive the proposed bonus are confronted with hazards which are far greater than the hazards confronting the employees in the same classifications who do not accompany test flights. To support this contention and to demonstrate the hazards which do exist, the unions introduced approximately 24 affidavits signed by employees attesting to the hazards of test flying.[5] The unions contended that these affidavits describe only a few of the risks which are encountered almost daily and were gathered from only a few employees engaged in test flights and in one company only. Hundreds of similar cases, it was stated, could have been presented.

All the affidavits submitted by the unions are contained in the record of the case and are readily available for inspection. A few will be noted in this report as examples. Typical among the dangers inherent in test flying as described in the affidavits are:

Examples

(1) "On Dec. 2, 1944, PV-2 No. 1037 took off on a test flight at 4:10 p.m. The landing gear stuck, and only after repeated, severe shaking was it made to operate. The air was very rough, and it was noticed that the left wing was oil canning abnormally and the left wing tip was deflecting about three times as much as the right. We then noticed the screws were coming out of the stress panel on the left wing. We lost 14 of them in flight. Upon investigation we found the screws in the panel were too short and did not reach the elastic in the stop nuts."

(2) "On Jan. 27, 1945, on Ship No. 1289, PV-2, a tow bar was overlooked and left in the right wheel strut, a result of hurried inspection and long working hours' fatigue. Following the take-off, the wheel did not come up into the wheel well. We were lucky. It could have come up into the wheel well with a little more force and stuck in the 'up' position. We circled the field and made an emergency landing."

(3) "On Ship 1319 Pilot S. Held 1st Prod. Metal particles in a sealed box caused a transfer relay to stick which in turn pumped the right front tank full until it overflowed into the exhaust stream. The interior of the airplane was immediately filled with gasoline fumes. Any spark from defective electrical or radio equipment would have exploded the airplane."

(4) "On Ship No. 1065 when, on take-off traveling at a speed approximately 100 knots per hour, the left propeller shifted into the full feather position necessitating closing the throttles and applying extreme brake pressure in order to avert going through fence at end of runway. This condition was caused by vibrations making two wires contact each other. This is but one of many flight hazards risked by flight mechanics. The pilot on the ship was Stanley Belts, who can verify this account."

(5) "As an illustration of some of the dangers encountered in test flights I wish to describe one phase of testing the radio altimeter in the Lockheed PV-2. It is necessary to fly at an altitude of three hundred (300) feet to make an adjusment on the radio altimeter.

"This low altitude run is usually made over the ocean and takes about five minutes. Should anything happen, such as a momentary loss of power, we could not conceivably have a chance to save ourselves."

(6) "On 1340 a two-pound bucking bar was found in a sealed outer wing inspection plate after flight. It would have been possible to shake this bar into the aileron rigging and jam the flight controls if rough air had been encountered. Plates cannot be opened before flight."

The unions introduced as an exhibit a letter written by James P. Seargeant, Vega flight radioman, in which many

[5] Union Exh. I.

of the dangers and hazards incurred in test flying are related.[6] The letter stated among other things:

"There is not a day that passes without something happening that causes the flight personnel to be continually reminded of the danger and hazards involved. These first and second test flights of aircraft are essentially shakedown flights, yet we also realize it is necessary for these flights to be made. It has been hastily mentioned that the thrill of flying should be fair compensation for this work. These statements may be traced to someone who makes these flights seldom, if at all. When the flights are made as they come—day after day, and often twice or more daily—the difference is readily established. It is not uncommon for the radiomen to spend from three to five of their eight hours in the air!"

It was argued that the hazards incurred by the men who go up on test flights have been increased because of the fact that the industry has had to employ many unskilled workers.

That dangers exist and are recognized by the company, the unions contend, are shown by the fact that Lockheed Aircraft Corporation, for example, requires flying personnel to wear parachutes and that additional parachutes be carried as a safety precaution.[7] Another precaution taken by the industry is to maintain fire equipment at the fields.[8] These precautions would be unnecessary, the unions contend, if no hazard were involved.

The unions have pointed out that there have been five fatalities among the hourly paid employees. In answer to the industry's argument that the fact that there have been five fatalities among hourly paid employees during the past five years does not show that the potential hazard is in any way greater than the evaluation which has already been assigned in the affected jobs, the unions have replied that the fatalities actually occurred within a period of ten months. The unions also stated that the industry has referred to hourly paid technicians only and had the number of deaths included those of monthly paid employees, the figure would have been considerably greater.

6 Union Exh. G.

7 Labor's Exh. A attached to posthearing brief.

8 Labor's Rebuttal Exh. A.

2. Differential Between Pilot and Technician

"That the test pilots are compensated for their risks—the risks of flying—while the men who accompany the test pilots (the hourly paid technicians in at least five (5) of the six (6) companies) are not compensated for the same risk as taken by the test pilots."

It is the position of the unions that the test pilots are compensated for the hazards incurred in test flights while the hourly paid employees who accompany the test pilots are not compensated for the same risks. According to the testimony, there are about 50 test pilots at Lockheed who fly on the average about 31 to 32 hours per month and receive rates ranging from $500.00 to $850.00 per month. There are about 16 co-pilots at Lockheed, and they are paid rates ranging from $250.00 to $375.00 per month. The comparatively low rate for the co-pilot is explained by the fact that the co-pilot has fewer hours and works as a co-pilot with a company in order to attain the experience and hours necessary to become a first pilot when there is an opening. The unions contrast the rates and hours of the pilots with those of the flight technicians and mechanics who work a minimum of 208 hours per month, included in which are hours spent in flying, at rates of $1.05 minimum to $1.45 maximum. Moreover, the unions add, the flight technicians and mechanics receive a life insurance policy of $10,000.00 only, whereas the pilots receive $25,000.00 life insurance policy.

3. Bonus as Compensation for Risk

"That the bonus, or premium payment, is the best method of compensating for this risk."

The unions have quoted from an analysis by a member of the Wage Stabilization Division of the Tenth Regional War Labor Board in support of their position that the best method of compensating for the hazard involved in flying is by paying a premium. This memorandum stated, among other things, that "a bonus computed on the basis of hours flown is best suited to reflect the variation in risk." Also it was stated that "a bonus seems to be the most practical method of compensating these employees for the hazard involved since the file shows that the personnel of the flight crew varies from day to day."

The unions quoted from the report of Mr. K. C. Cole, chairman of the West Coast Aircraft Committee for the Twelfth Region, in which it was stated:

"There are several objections to revising base pay as a method of taking care of the situation. For one thing, 'flying' is hardly an appropriate part of job descriptions. So far as their job is concerned, these men are premium mechanics doing the same thing in the air that they do on the ground. For another thing, there is no intent to commit the company to any particular organization of mechanics for this work. The 'pool' may consist of ten (10) men or fifty (50) men—or there may be no pool at all. The best way of handling the situation is, therefore, to award additional compensation strictly in proportion to the special hazards involved in experimental flying without touching base pay."

The unions further argued that Lockheed Aircraft Corporation had recognized that a bonus is the best method for compensation for duties which are exceptionally disagreeable. The unions referred to a bonus which is paid in the case of tank cleaners.

4. Evaluation Method

"That industry's proposed method of evaluation, as discussed in their preliminary brief, is not workable, is unrealistic and inequitable, and would cost more than the premium payment provided for in General Order No. 72."

The unions have argued that the industry's position that the proper method for handling the hazard factor, if any, is through the Restudy Committee is unworkable. It was stated that, despite the fact that the companies have a plan for evaluation of technical jobs, that plan was not followed in establishing rates for pilots. Likewise, it would not be possible to evaluate the jobs of flight technicians. But, the unions argued, even if the jobs were reevaluated and the hazard factor placed at a new maximum of 65 points instead of 45 points, no wage adjustment would be forthcoming. It would be necessary to increase the maximum by 50 points, not 20 points, to bring the job up to the higher labor grade. Furthermore the two classifications which are chiefly involved in this case, the field and service mechanic and the radio technician, are already in the highest paid labor grade, and therefore there are no higher classifications into which the jobs could be evaluated.

The unions have argued that, if evaluations of the jobs were to be used as a basis for determining increased rates for the hazards involved, it would require a general increase to the large number of workers, estimated at about 5,000, involved in the affected classifications and that an increase of only $.01 per hour to the employees in these classifications would cost more than the application of General Order No. 72.

5. Propriety of Bonus Plan

"That the premium labor seeks is proper; that it is not unstabilizing, is not inflationary, nor, as industry argues, is it habit forming; further, that it will not increase the cost of the product to the Government."

The unions have contended that the proposed bonus is approvable under the wage stabilization policies for the following reasons: It is justified in order to eliminate intra-plant inequities; it is necessary in order to remove differentials between companies in the industry which result in gross inequities and inequalities; and that, because of rare and unusual circumstances, it is necessary for the effective prosecution of the war.

On the question of inter-plant inequities, the unions pointed out that there are a number of jobs to which have been assigned the fifth degree of hazard. In addition to the field and service mechanic and the inspector service and flight, which are the two primarily here involved, the following jobs have been assigned the fifth degree of hazard: Crane Riggers A and B; Drop Hammer Operator A, B, and C; Electrician Maintenance A, B, C; Electroplater A and B; Hydropress operator A, B, and C (found in some companies).[9] All of these jobs have been assigned to the fifth degree of hazard regardless of whether the employees go up on test flights. In the Mechanic-Field and Service A, B, and C, classifications, employees perform work both on the ground and in the air, but there is no difference in their compensation. An intra-plant inequity is thus created where employees who accompany ships on flight receive the same rate of pay as the vast majority of them who do not go up.

In this connection it was the unions' postion that the employees are re-

9 Trans. pp. 95 and 96.

quired to accompany test flights. The unions presented considerable argument on this point and in their post-hearing brief recited a recent occurance during which the employees, relying on the industry's statement that the hourly paid employees were not required to fly, declined to take any further flights at Lockheed. According to the unions' account there was an almost immediate tie-up of planes because the company was unable to check the planes out to the satisfaction of the Army or the Lockheed inspectors. Both the Army and Navy thereupon appealed to the workers to continue the flights pending an investigation, which the employees agreed to do.[10] The company then discontinued the use of crew chiefs, mechanics, electricians, AFCE men, and radio men, which resulted in an almost complete tieup of planes. On Apr. 2, 1945, the Army and Navy issued identical letters requesting the contractor to supply qualified personnel to check radio and mechanical equipment on flights.[11] The company thereupon authorized the superintendent of the flight division to request qualified personnel to accompany airplanes on production flights.

The unions contended that these incidents demonstrate the fact that the hourly paid workers are essential if reflights with added expense are to be avoided. Thus it is the unions' position that hourly paid workers are required to accompany test flights and that an intra-plant inequity is created by the fact that employees performing this work receive no more than employees who do not accompany the flights.

That the proposed premium would not be unstabilizing from an industry standpoint or inconsistent with Board policy, the unions argue, is shown by the fact that premiums are paid in the industry. The Twelfth Regional War Labor Board has approved bonuses for the employees of Boeing Airplane Company in excess of the bonus requested here. Rates in excess of the proposed rate are paid at Northrop Aircraft Company to the engineers. The proposed premium is less than that which was being paid by North American Aviation, Inc., at the time their proceedings commenced. Furthermore, the unions contended that it is the policy of the Army and Navy to pay flight pay to all enlisted men who engage in flights.

The unions request that the retroactive date of the proposed bonus be July 7, 1943, the date the unions originally submitted their petition.

POSITION OF THE INDUSTRY

The industry has vigorously objected to the position taken by the unions that this is not a new case and that the panel should recommend and the Board find that the West Coast Aircraft Committee and the Tenth Regional Board had acted within their jurisdiction in issuing General Order No. 72. The industry argued that General Order No. 72 was vacated and set aside by the Board in its order of Sept. 4, 1944, and that the Board, by its order of Dec. 27, 1944, directing the National Airframe Panel to hear the merits of the dispute, did not intend the panel to consider the question of whether or not the West Coast Aircraft Committee and Tenth Regional War Labor Board had acted within their jurisdiction in issuing General Order No. 72. The industry therefore objected to the testimony of the unions and the exhibits introduced with reference to the proceedings before the West Coast Aircraft Committee and the Tenth Regional Board on the ground that they were incompetent, irrelevant, and immaterial. It was the position of the industry that the actions of the West Coast Aircraft Committee or the Tenth Regional Board have no bearing on the issue before the National Airframe Panel.[12]

The major arguments made by the industry in opposition to the proposed bonus or any bonus may be summarized in brief as follows:

1. The employees who would benefit by the proposed bonus are not subjected during the time spent on test flights to any potential hazard substantially greater than normal non-occupational living hazards.

2. The proposed bonus, or any bonus, would be a pattern-making innovation in the industry as a whole and particularly in the area and as such would be inflationary and contrary to the wage stabilization program.

3. The proposed bonus, or any bonus, would substantially unbalance job relationships in the industry. The proper way of dealing with the hazard factor is in the evaluation of the job.

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10 Union Exhs. B and C attached to post-hearing brief.

11 Union Exhs. D and E attached to post-hearing brief.

12 Tr. p. 10.

1. Occupational Hazard

Under the first heading it is the position of industry that the unions have failed to show the existence of any abnormal hazards. While it may be that five fatalities among the hourly paid employees during the past five years show that there is some potential hazard, it does not show that a higher evaluation for the hazard factor should have been assigned to the affected job, nor does it show that the potential hazard is greater than the unavoidable hazards of normal living. It is the industry's position that the five deaths and the affidavits which the unions submitted were the only evidence produced at the hearing to justify a bonus for time spent by the hourly paid employees on production test flights.

With respect to the affidavits it is the position of the industry that in most cases the facts described by the affidavits have been shown to bear no substantial relation to potential hazards. Five of the affidavits, the industry argued, relate to the use of co-pilots not actually qualified to operate the plane. The industry states that the co-pilot has nothing whatever to do with the safe operation of the plane except if the pilot dies unexpectedly or faints; that no case was even suggested where the pilot had been unable to perform his normal duties, nor is it reasonable to expect that during a flight limited to 2½ hours at altitudes not greater than 10,000 feet such an accident would occur. The industry's comments with respect to all the affidavits are found on pages 11 through 15 of the industry's opening post-hearing brief. With respect to the particular six affidavits which have been quoted in this report the industry makes the following comments:

Examples

(1) "Another affidavit states that while shaking down the landing gear during the course of a certain flight, some screws came out of a panel on one of the wings. Testimony disclosed, however, that this fact would not affect the plane's flight characteristics (Tr., p. 279-285)."[13]

(2) "The final affiffidavit discloses a case in which a tow bar was left in the wheel strut, as a result of which the wheel naturally would not come up into the wheel well. Inasmuch as there was nothing in this occurrence to prevent the wheel returning to its landing position, the potential hazard predicated thereon in the affidavit must be deemed pure speculation (Tr. p. 297 and p. 298)."[14]

(3) "Another affidavit develops the fact that on a certain flight a short circuit resulted in the overflow of a gas tank into the exhaust stream. The purported point of the affidavit was that, by such overflow, gas might have been ignited. Testimony disclosed, however, that by virtue of the construction of the plane, ignition could have resulted only in a most widely imaginative chain of circumstances (Tr., p. 290-293)."[15]

(4) "Another affidavit refers to a case in which a propeller shifted into full feather position, which necessitated quick action with the brakes to stop short of a fence at the end of the runway. Quite clearly this represents a potential hazard. Its occurrence in the case of one production test flight certainly does not demonstrate, however, that it would be more likely encountered in this type of flight than in any other flight. It is equally clear that, in the particular case recited, the plane was adequately designed to cope with the emergency (Tr., p. 294 and p. 295)."[16]

(5) "Still another union affidavit merely details the fact that in the altimeter testing phase of the test flights it is necessary to fly at 300 feet over the ocean for about five minutes. As far as is shown, however, no accident has ever occurred during this portion of any test flight; and there is no known reason why any more danger should be attached to this particular phase than during the take-off or landing of any airplane (Tr. p. 271 & p. 272)."[17]

(6) "Then there was the case of a bucking bar sealed into an outer wing. The testimony, however, was to the effect that similar occurrences have been numerous over the last 15 or 20 years without any accident resulting in any instance (Tr. p. 269 & p. 270)."[18]

Industry believes that the affidavits show the difference of opinion with respect to the hazards in flying which exists between the employees involved in this case who have encountered some abnormality of flight for the

13 Industry's opening posthearing brief, p. 13.

14 Industry's opening posthearing brief, p. 15.

15 Industry's opening posthearing brief, p. 13.

16 Industry's opening posthearing brief, p. 14.

17 Industry's opening posthearing brief, p. 12.

18 Industry's opening posthearing brief, pp. 11 and 12.

first time and men who over many years have encountered the same or a similar abnormality which has been found to be of no significance.

It is the industry's position that the unions have failed to present any evidence to show that there exists in production test flying a potential hazard which is "sufficiently in excess of the normal hazards of life and work to be measurable with some degree of accuracy. Proof of this fact alone would not make their case, but failure to prove it must obviously leave their case without any support whatever." [19]

Safety Precautions

Testimony was given by industry's witnesses and evidence was introduced to show that no production test flights are made until every known means has been utilized to assure that the plane being tested will operate in accordance with its design, and no test flights are made except under the best possible flying conditions. In brief, the industry argued that there is nothing more dangerous on a production test flight than there is in the course of normal airline travel. As far as weather conditions are concerned, production test flights are made under the best possible conditions, which would not be true of commercial flying. [20]

Examples given by the industry of the safety precautions in production test flights were:

(1) Planes carry a gas load sufficient to fly 2,700 miles, but the miles actually flown on test flights are approximately 565. [21]

(2) The normal weight of the plane on a test flight, including gas, oil, and crew is 50,000 pounds. The basic gross weight for which the plane was designed is 56,000 pounds. By actual experience it has been shown that the plane will fly at a weight of 72,000 pounds. The plane will stand 140,000 pounds without yielding. And it has been determined by test loads that the ultimate load under which the plane will finally break down is 210,000 pounds. These figures show the margin of safety on test flights. [22]

(3) In test flights operating at 56,000 pounds at 65 per cent of maximum throttle, a plane can be kept in approximately level flight with only two engines. [23]

(4) Planes on production flight tests are landed with a gross weight of 56,000 pounds, but the landing gear is designed so that it could land with 378,000 pounds. [24]

(5) In production test flights, the ceiling is only 10,000 feet. In experimental and prototype flying the ceiling is 24,000 feet, while the maximum ceiling is over 30,000 feet. [25]

In brief the industry has argued that the production test flight is not very different from normal airline travel and in such respects as weather conditions, terrain over which the flight is made, and the extent of the safety factor as to fuel, load, and engine power, the production test flight is less hazardous than normal airline travel.

The industry argued that the many safety precautions must be considered as persuasive that there is no abnormal potental hazards "when not counteracted by evidence of excessive deaths or injuries." [26]

The industry has classified hazards into three groups: (1) predictable and controllable, (2) predictable but uncontrollable, and (3) unpredictable and uncontrollable. There should be no compensation for the first type of hazard since that type can be controlled. It is impossible to compensate for the third type of hazard because this type is unpredictable and unforeseeable, and hence there is no experience factor upon which compensation for risk can be based. Compensation is proper, however, for the second type of hazard because it can be based upon experience data with reference to accidents which have happened in spite of efforts to avoid them. The hazard of flying falls to a certain extent into this second classification. In the jobs which are affected by the outcome of this case, a value has, according to the industry, been assigned to the hazard factor, and the proper way to compensate for this factor is through an evaluation and not an arbitrary bonus which bears no relations to the degree of hazard.

It is the industry's position that the present wage rate for the classifications involved was established with due regard for whatever flight hazards may exist. The job description for Field and Service Mechanics "A" expressly provides that it is "occasionally required that this man accompany

19 Industry's rebuttal brief, p. 1.
20 Tr. p. 254.
21 Industry's Exh. B.
22 Industry's Exh. C.
23 Industry's Exh. D.
24 Industry's Exh. E.
25 Industry's Exh. F.
26 Industry's opening posthearing brief, p. 10.

planes on maiden flights." However, the industry adds, despite the job description, no man is ever required to fly.

2. Violation of Wage Stabilization

The industry has argued that the proposed bonus, or any bonus, would be an innovation in the industry as a whole and particularly in this area. It was argued, therefore, that the unions' request should be denied as being inflationary and contrary to the wage stabilization program. The industry stated that during a period of 13 months ending Feb. 1, 1945, 937 hourly paid employees had engaged in test flights for a total of 18,055 hours. Had this time been paid for at $5.00 per hour, the total cost would have been $90,275. However, the industry contends that if the bonus were paid to hourly paid employees accompanying test flights the bonus would also have to be paid to salaried employees accompanying test flights and the total expense for the 13-month period would be $661,305. The industry states that, while this amount spread over the entire industry may not be "staggering," if the bonus principle is inaugurated, "there is almost no conceivable limit to the extent to which it might spread." Many other groups of employees would consider their jobs more onerous and hazardous than other jobs, and they too will demand a bonus.

The industry argued the proposed bonus cannot be justified under the wage stabilization program unless such bonus conforms to the prevailing industry practice. But only North American Aviation, Inc. of the six airframe companies in southern California has ever had a practice of making any extra payment for time spent by hourly paid employees in production flights, and the plan at North American provided not for $5.00 per hour but only for an additional payment of 20 hours per week for any week during which a flight is made. The fact that one company out of six paid a bonus does not establish a practice in the area which would justify extension of the bonus to the other five companies. At the present time North American Aviation, Inc., is not producing the type of plane requiring production test personnel, and hence it no longer pays any bonus.

The industry argued that the fact that Boeing Airplane Company pays a bonus does not make any industry practice and points out that frequently the industry has been told that Boeing should not be considered in determining pertinent area practice.

Nor can the bonus be justified, the industry contended, on the ground that it is necessary for the elimination of an inequity between those hourly paid employees who accompany test flights and those who do not. In this connection the industry maintains that no hourly paid employee has ever been or is required to engage in production test flights and hence there can be no claim of an inequity when flight work by the hourly paid employees "is neither demanded by the companies nor even essential to the production of airplanes."[27]

The industry has referred to the incidents of March and April 1945, recited in the union's post hearing brief, where the flight technicians refused to accompany further flights as a "sudden experiment." The industry states that the question of whether the use of field service mechanics in production test flights is actually necessary is wholly incidental. The industry argues that the emphasis given to this question by the unions would "lead anyone to believe that its main function was to draw attention away from the obvious fact that the unions have definitely failed to prove the fundamentals necessary to support their proposal." At any rate, the industry argued, the six-day period during which the field service mechanics did not accompany production test flights did not provide a fair test as to whether the use of field service mechanics is necessary. The changing of an established system for testing airplanes would naturally require a period of adjustment. Actually during the 6-day period, 41 planes were delivered to military authorities. Nine planes were reflown, but in five cases the test flights were made during the rush at the end of the month when the number of reflies increases even when field service mechanics are utilized.

3. Disturbance of Job Relationships

The industry has vigorously opposed the payment of any bonus on the additional ground that it would unbalance the carefully worked out relationships between jobs. It is the industry's position that the job studies which have already been made have resulted in a balanced relationship within the factory jobs themselves and between the factory jobs and the technical, office, professional, and administrative jobs.

[27] Industry's opening posthearing brief, p. 8.

Exhibits were introduced by the industry to support its contention that the bonus would unstabilize job relationships. It is expected, on the basis of past practice and future schedules, that 21 people at the San Diego division of Consolidated Vultee Aircraft Corporation, Inc., will do most of the flying for that company during the next year. Industry's Exh. H shows that a bonus of $5.00 per hour for the estimated minimum amount of time that will be spent in flight will result in an average yearly take-away of $6,256.34, which is an increase of 69 per cent. If the $5.00 bonus is paid for the estimated maximum amount of time that will be spent in flight, the average yearly take-away will amount to $7,195.34, which is an increase of 95 per cent. These figures showing the possible yearly earnings of the hourly paid employees are compared with the earnings of pilots, co-pilots, flight engineers, radio operators, and supervisory ground personnel. The hourly paid employees would earn nearly as much as pilots, whose average annual income is around $8,000.00; more than the co-pilots, whose average annual income is around $5,400; and considerably more than the flight engineers and radio operators, whose average annual incomes are around $3,867.00 and $3,662.00 respectively. But even more disturbing to the rate structure, it was stated at the hearing, would be the differential created by the bonus between earnings of the hourly paid employees and the earnings of the supervisory personnel. Field operations foremen receive average annual earnings of $5,520.00, which is substantially below even the minimum figure of the estimated earnings of the hourly paid employees.[28]

DISCUSSION

The unions have raised the contention that the panel is authorized to consider the question of whether the West Coast Aircraft Committee and the Tenth Regional War Labor Board had jurisdiction to issue General Order No. 72. The question of the jurisdiction of the West Coast Aircraft Committee appears to have been clearly disposed of by the National Board in its directive order of Sept. 4, 1944, which provided:

"The directive order dated June 13, 1944, issued by the Regional War Labor Board for the Tenth Region in the above entitled case (General Order No. 72, West Coast Aircraft Committee Case No. 10-72-AG) is hereby vacated and set aside."

The directive order of Dec. 27, 1944, referring the dispute concerning the bonus to the National Airframe Panel with instructions to the panel to make a recommendation for disposition of the dispute on its merits did not alter the decision of September 4 vacating and setting aside General Order No. 72. The panel does not, therefore, believe that it is its duty to make any recommendation on the question of the jurisdiction of the West Coast Aircraft Committee and Tenth Regional War Labor Board.

The instructions to the panel were to conduct a hearing and to make a recommendation for disposition of the dispute on its merits. Pursuant to the instructions, the hearing was held on Mar. 13 and 14, 1945. In addition to presenting evidence and testimony during the two days of hearing, the parties have submitted preliminary briefs, posthearing briefs, and rebuttal briefs. There is, therefore, a substantial record before the panel.

Unfortunately the panel has been unable to agree upon even a majority recommendation. The labor members proposed that the panel recommend the bonus that had originally been ordered by the West Coast Aircraft Committee and the Tenth Regional Board. The industry members proposed that the panel recommend no bonus. The views of the labor and industry members of the panel are set forth in the attached separate opinions. The public member, on the other hand, believed that those hourly paid employees who perform duties in test flights are entitled to some premium over and above the pay received by employees in the same classification who do not accompany test flights. However, the public member was unwilling to agree with the labor members that the premium should be placed at so high a figure as $5.00 per hour. In his opinion there was insufficient evidence in the record to support this amount.

Opinion of Public Member

The opinion of the public member that there should be some bonus is based primarily on the fact that he believes that there are hazards in flight which are not present in work performed on the ground. That there are hazards in flight which are not inherent in ground work is shown by the fact that the companies take out a

[28] Industry's Exh. H, Tr. pp. 327-333; industry's opening posthearing brief, pp. 16-21.

life insurance policy to the extent of $10,000 for employees who are called upon to take part in test flights. The premium is paid by the companies.[29] Other employees not called upon to perform duties in test flights do not receive the protection afforded by such a life insurance policy. That there are risks in production test flights which are not found in ground work is supported by the fact that a bonus payment for such work is not an innovation in the industry. For example, the Twelfth Regional War Labor Board has ordered the payment of varying bonuses depending on the type of flight to flight technicians at Boeing Airplane Company. The National Board has approved a bonus for flight test inspectors accompanying test flights at the Republic Aviation Corporation at Evansville, Ind.; North American Aviation, Inc., paid a bonus to flight service mechanics, radio operators, and other groups; the National Railway Labor Panel recently, on May 9, 1945, approved flight pay of $5.00 per hour at Continental-Denver Modification Center for mechanics required to make test flights on B-29 airplanes; and there is evidence that at one time Curtiss-Wright Corporation at Louisville paid a bonus to hourly paid employees.

There is no question but that the evidence and exhibits demonstrate clearly that the companies have taken every precaution to prevent accidents and that production test flights are made only under the best possible conditions with respect to both weather and the terrain over which the flights are made. Despite these precautions and safety measures, the fact remains that accidents have occurred and there have been five fatalities among the hourly paid workers during the past five-year period. It was pointed out by the unions that the deaths of the five hourly paid employees occurred within a period of ten months.

Compensation for Flight Risk

Having concluded that there are risks in flying which are not inherent in ground work, the question is then presented as to whether those risks are already compensated for. The industry has argued that the job evaluations already take into account the fact that the hourly paid employees may be called upon to accompany test flights. In this connection it is pointed out that the unavoidable hazards factor for the job classification, Mechanic-Field and Service "A", is assigned the maximum number of degrees and points, 5 and 45 respectively. The characteristics of the unavoidable hazards factor are described as follows:

"Occasionally required that this man accompany planes on maiden flights. He also must work in the vicinity of propeller blades in motion."

And the description of the work performed by the Mechanic-Field and Service "A" states in part that:

"The operations consist of conducting the engine run-in; testing the operation and function of all instruments, engine and flight controls, fuel and oil systems, propeller mechanism, hydraulic system and units, radio and electrical system and units; and the repair of minor mechanical defects before, *during*, or after flight test procedures." (Italics added)

Thus it is apparent from the job descriptions of the field and service mechanics that some flying was contemplated. But it is not clear that any extra compensation was added to provide for the risks of flying. The dangers of working in the vicinity of moving propellers would appear to require the fifth degree of hazard regardless of whether the employees were called upon to accompany test flights. There are other classifications to which have been assigned the fifth degree of hazard where the employees are not called upon to accompany test flights. Other jobs having the fifth degree of hazard are: Drop Hammer Operator "A", "B", and "C", Electrician-Maintenance "A", "B", and "C", Electroplater "A" and "B" the Hydropress Operator "A" and "B", found in some of the companies. Employees in these classifications do not accompany production test flights, yet the jobs have been assigned the fifth degree of hazard. It appears that the risks inherent in these jobs are comparable to the dangers of working in the vicinity of moving propellers. For example, the unavoidable hazards as described in the occupation of Electrician-Maintenance "A" is described as follows:

"This work involves exposure to frequent cuts and bruises, danger from falling tools or materials, and minor shocks. There is little exposure to fatal shock since it is required that work be performed with 'power-off' except in cases of emergency."

It appears that the dangers of working around moving propellers are fully as great as the hazards described for

[29] Industry's prehearing brief, pp. 17-18.

the electrician-maintenance, and hence it follows that the field and service mechanic would be entitled to the maximum degree of hazard regardless of the fact that some employees might be called upon to accompany test flights. It follows that no extra compensation has been added because of the dangers of flight.

The occupation of Radio Technican "A" was one of the occupations mentioned, the employees of which accompany test flight. The job summary states:

"This occupation covers the installation and repair, maintenance, check-out, or testing of radio sending and receiving equipment. It also includes the operation of radio sending and receiving equipment on the ground or *in flight* for checkout, testing, or trouble shooting." (Italics added)

The unavoidable hazards factor is described as follows:

"The operator is exposed to accident hazards such as severe burns or shocks from high voltage."

The hazard factor in this occupation is rated at the third degree with 25 points. No mention is made in the description of the hazard factor that employees in this classification may be called upon to accompany test flights. It can be assumed, therefore, that there has been no added compensation for any risks in flying.

Other classifications mentioned which might be involved in any flight pay bonus were: Installer-Armament "A" and "B", Inspector-Service and Flight "A" and "B", instrument technicians in some companies, and operational check-out man. Examination of the characteristics of the unavoidable hazard factors for these occupations reveals that in none is there any mention of risks incurred in flight. It seems fair to assume therefore that the dangers of flight were not included in the determining the number of points that should be fixed for the hazard factor.

It might also be pointed out that the job description for the Inspector Service and Flight "A" states in part:

"* * * After full power ground run-up, complete check of engine including flow of fuel, oil, and hydraulic fluid; general safety check of all units on engine and controls (ailerons, elevators, rubber, and trim tabs); safety of propeller, landing wheels, tires, etc.; and approval of plane for maiden flight *on which the inspector may accompany the ship to record and inspect general functioning of entire ship;* * * *" (Italics added)

The description of the work performed by the Service and Flight Inspector "A" thus includes refefence to the fact that employees within this classification may accompany test flights. However, an examination of the characteristics of the hazard factor for this job contains no reference to any risks incurred in flight. The description is as follows:

"It is necessary to work in the vicinity of whirling propellors. In starting and running-up of engines, the inspector is exposed to fire hazards."

The hazard factor is evaluated at the maximumm number of points, namely 45, although no reference is made in the hazard characteristics that the inspector may accompany the plane in flight. The conclusions to be drawn are that the danger of working in the vicinity of moving propellors constitutes a sufficient hazard in itself to justify the maximum number of hazard points and that no additional credit has been given for the risks in flying.

It is also to be noted that, while the hazard description in the mechanic-field and service classification specifies that it is "occasionally required that this man accompanying planes on maiden flights," no such specification appears in the characteristics of the unavoidable hazards factor of the inspector-service and flight classification. But in both cases the hazard factor has been assigned the maximum number of points. Since the characteristics of both include working in the vicinity of moving propellers and one contains no reference to flight, it is reasonable to assume that the mechanic-field and service classification would receive the maximum number of hazard points regardless of the fact that the accompanying of test flights was required.

In brief it is concluded that the present evaluation of jobs has not taken into account the risks of flying for the following reasons:

(1) The characteristics of the unavoidable hazards factor for the mechanic-field and service specify that a man may be called upon to accompany test flights, but nevertheless it appears that the job would call for the maximum number of points regardless of that fact.

(2) A comparison of the unavoidable hazard characteristics of classifications having the maximum number of hazard points shows that the mechanic-field and service would be entitled to the maximum number of points even if the employees in this classification were never called upon to accompany test flights.

(3) Other classifications wherein the employees may be called upon to accompany test flights contain no reference to flight, and in some cases the maximum number of hazard points have not been assigned.

Bonus versus Evaluation Method

Nor is it believed that compensation for the risks incurred in flight can properly be made through an evaluation of the jobs. In the first place it must be noted that not all employees within the classifications which are here involved are called upon to accompany test flights. If the hazard factor for flying were taken into account in establishing the rates for the classifications, then all employees within those classifications would be compensated for risks to which many are not exposed. This procedure would continue what appears to be an obvious inequity between those employees within a classification who accompany test flights and those who do not.

Moreover, since there appears to be no regularity among the companies with regard to production test flights, it seems impractical to include in an SCAI job evaluation which would be applicable to all companies the hazard of flying when some of the companies may have little if any production test flying.

Because there is no uniform practice among the companies with respect to production test flights and because there appears to be no regularity within a single company, it is far more equitable to compensate for the risks of flying by a means of a bonus which would be paid only to those employees who actually accompany test flights and only for such time as is actually spent in flight.

But even if the risks of flying were to be taken into account in computing the number of points to be assigned to a job under the unavoidable hazards factor, it is not likely that such would result in any increase in the rates of the hourly paid employees who accompany test flights. The majority of those employees who fly are Field and Service Mechanics "A", and they are already in Labor Grade 1 and receive the maximum rate which is paid under the SCAI plan. Even if the present maximum of 45 points for the hazard factor were increased to 65 points, which is the new maximum agreed to by the Restudy Committee, it is not possible for there to be any increase in the rates of these employees.

The industry has argued that the employees who accompany test flights are already receiving an allowance to compensate them for any additional hazard above the normal hazards in the form of life insurance in the amount of $10,000. The standard premiums, which are paid by the companies, are presently $.60 to $.62½ per flying hour. Life insurance will, in the case of death of the employee, benefit the employee's family but is of course of no immediate benefit to the employee himself nor does it in any way compensate the employee for the risks of flying if there are no accidents. The risks and hazards of flying are present regardless of whether or not accidents occur. The employee who performs duties in the air is faced with these hazards and should in some way be paid for them even in the absence of accidents. If life insurance which is paid only to an employee's beneficiaries in case of his death were to be the only compensation for the added risks, then there would be no compensation at all to the employee who escapes accidents. It is only equitable that, if one employee's duties are more hazardous than another's, then his job is different and he should receive some remuneration over and above that of the second employee although he meets with no accident. It is, therefore, the opinion of the public member of the panel that the life insurance policy does not adequately compensate the employee for the risks of flying.

Amount of Bonus

Having concluded that employees who accompany test flights are entitled to some compensation above that received by employees whose work does not take them above the ground and having also concluded that the employees are not adequately compensated for risks incurred in flight either under the present job evaluation or by the insurance policies which the com-

panies pay for and that the bonus is the best method for paying for such risks, it then becomes necessary to determine how much the bonus should be. On this question the public and labor members were in sharp disagreement, the labor members believing that the full amount requested by the unions was warranted. The public member is of the definite opinion that no showing was made that would justify so large a bonus as $5.00 per hour.

A bonus of $5.00 per hour appears to be all out of proportion to the risks which the unions have shown to exist. The unions have recounted the fact that, among hourly paid employees only, there have been five deaths within a period of ten months. The industry has replied that these are the only deaths among the hourly paid employees in the six companies that have occurred in a period of five years; that, on the basis of actual records for the 13-month period ending Feb. 1, 1945, hourly paid employees have engaged in test flights for 18,055 hours, which, projected over a period of 5 years, would indicate that 83,333 test flight man-hours have resulted in only five fatilities.[30]

No figures were introduced to show that the deaths which have occurred in production test flights are so many times more numerous than deaths which have occurred in normal work as would justify such a substantial difference in compensation. There are, of course, hazards and risks of varying degrees in all jobs as is clearly shown by an examination of the hazard characteristics of the various SCAI classifications.

The more serious hazards are found in the classifications of drop hammer operator, electrician-maintenance, electroplater, hydropress operator, and those classifications in which the employees work in the vicinity of moving propellers. The work of the Electrician-Maintenance "A," for example, involves "exposure to frequent cuts and bruises, danger from falling tools, or minor shocks." The work of the electroplater "necessitates exposure to toxic fumes such as trichlorethylene, chromic acid, and electrolytes containing sodium of cyanide and caustic soda. Chromic acid causes dehydration and injury to the membranes of the respiratory tract." It is the opinion of the public member of the panel that in order to justify a premium of $5.00 per hour there must be a showing that the dangers of flight are many times greater than the hazards described for the Electrician-Maintenance "A," the electroplater, or any other classification. The unions have, in the opinion of the public member, failed to make such a showing.

In determining what the appropriate amount of the bonus should be, there are certain facts to be considered. We know that the West Coast Aircraft Committee for Region XII has approved the following order:

"Flight Technicians

"Flight technicians, which classification shall include electricians, radio technicians, automatic flight control technicians, or others who test, adjust, or operate equipment during the flight of the aircraft shall receive, in addition to their regular wages, flight pay as follows:

	Per Hour
"A. Experimental test flying prototype airplanes	$10.00
"B. Experimental test flying on designated production airplanes which have been set aside for special tests..	7.00
"C. Routine test flying on production airplanes	5.00

"D. A minimum of one (1) hour's flight pay shall be paid for the first ascension on any calendar day; for additional ascension on the same calendar day, flight pay shall be at the rates specified above."

North American Aviation, Inc., at Inglewood, Calif., has followed a practice of paying for 20 extra hours for any week during which an employee in the affected classifications participates in test flights. Apparently the company is not at the present time paying such a bonus since it is not producing the type of plane which would require the services of the employees in the classifications here involved.

The National War Labor Board in November 1943, approved a bonus of $4.00 per hour for "flight-test inspectors" at the modification center of Republic Aviation Corporation at Evansville Ind.

There is evidence in the record that Curtiss-Wright Corporation at Louisville, Ky., at one time paid a bonus of $4.50 per hour to hourly paid employees.

In considering what an appropriate bonus might be, we know, of course,

30 Industry's prehearing brief, pp. 6 and 7.

that, in the opinion of the West Coast Aircraft Committee and the Tenth Regional War Labor Board, $5.00 per hour was proper.

Thus, in support of a figure of around $4.00 or $5.00 per hour, there is the practice which exists or has existed in a few companies and the fact that the West Coast Aircraft Committee and the Tenth Regional War Labor Board approved $5.00 for the companies involved in this case. The higher amounts that are paid at Boeing are paid for work performed on experimental flights, and there is no evidence that such flights are comparable to the production test flights for which a bonus is requested in this case.

On the other hand, in support of the industry's position that there should be no bonus is the practice which appears to prevail throughout most companies in the industry of paying no bonus.

It is the opinion of the public member that the fact that a few companies pay a bonus of $4.00 or $5.00 per hour should not in itself justify such a bonus in this case. This seems particularly true in the absence of any clear showing that the conditions under which the bonus would be paid in this case are similar to the conditions under which a bonus is paid or has been paid in the other companies. The industry has emphasized the fact that the "test flights" here involved are not flights to test the maximum capacities of a plane; but, on the contrary, "All that it is endeavored to ascertain on these flights is that the controls and all other portions of the plane being flown are in normal working order. To ascertain this fact, the planes are flown only normally." The industry has stated that "the maiden flight of a plane on test flights of the type here involved is not substantially different from the flight of the same plane after repair or overhaul or even from any subsequent flight of the same plane." [31]

It is obvious that the size of the bonus paid to employees who accompany test flights should vary in accordance with the type of flight. It may well be that a bonus of $4.00 per hour might be justified at Republic Aviation Corporation, for example, without being justified at the companies in southern California.

A bonus of $5.00 per hour would not be justified in the light of the salaries and wages paid to other groups of workers. If an employee's base rate was $1.45 and he worked 225 hours per month during 50 of which he accompanied test flights, his total monthly earnings would be $619.75. The average monthly rate of the pilots themselves is stated to be $661.41, while copilots receive $450.00, flight engineers $322.25, and radio operators $305.17. In the supervisory group the field operations foremen receive $460.00 and the flight foreman $391.42.[32] While it is true, of course, that the total number of hours worked by hourly paid employees and the pilot differ substantially, still these figures show that a bonus of $5.00 per hour would result in the hourly paid employees receiving total earnings which would be entirely out of proportion to the earnings received by the pilots and other groups. The average monthly hours flown by the test pilots at Lockheed Aircraft Corporation, for example, were estimated to be 31 or 32 hours per month.[33] Of course the earnings of the hourly paid employees would vary considerably, depending upon the number of hours flown. The figure of 50 hours was considered the minimum number of hours that employees in the field operations department of the San Diego division of Consolidated Vultee Aircraft Corporation would be called upon to fly. The maximum number of hours was estimated to be 65. In the flight department of the San Diego division, the minimum number of hours that an hourly paid employee might be called upon to accompany test flights was 25 while the maximum was estimated to be 40. Although the total earnings of the hourly paid employees may vary considerably, it is apparent on the basis of the minimum figures that a bonus of $5.00 per hour would substantially upset the relationship between the various groups.

One figure that has been mentioned as an appropriate bonus was $2.00 per day. This was suggested by the public member of a subcommittee of the West Coast Aircraft Committe after an investigation of the question of a flight pay bonus. This amount was arrived at on the basis of insurance rates. He found that the premium rate for aviation mechanics who do not fly was $1.69 per $100.00 while the rate for those who do fly was $5.51 per

31 Industry's prehearing brief, pp. 5 and 6.

32 Industry's Exh. H.

33 Tr. p. 36.

$100.00, or about 3¼ times as much. He considered that the jobs of mechanic-field and service and inspector service and flight were entitled to 45 points under the hazard factor without flight. With flight they would be entitled to 3¼ times as many points which would result in a total number of points for the hazard factor or 146, an increase of 100 points. This would increase the total number of points for all factors from around 600 to 700, which would result in an increase in the hourly rates of between $.10 and $.15 per hour. Applying these figures on a daily basis, the resulting increase would be between $.80 and $1.50 per day. He therefore recommended that a bonus of $2.00 per day be paid to all hourly paid employees participating in test flights without regard to the duration of the flight.

This appears to be the minimum amount that could be justified if any bonus is to be granted. However, it is the opinion of the public member that, in considering what the proper bonus should be, some account must be taken of the fact that bonuses greatly in excess of $2.00 per day have been worked out through mutual agreement in other cases or by voluntary unilateral action on the part of a company. It is believed that, while these amounts should not be controlling in this case, nevertheless they cannot be totally disregarded. With these figures in mind as well as the fact that no bonus is paid to hourly paid employees in many companies, it is the conclusion of the public member that a bonus of $2.00 per hour would be justified.

From the standpoint of wage stabilization, it is not believed that a bonus of this amount would be unstabilizing. The purpose of the bonus is to eliminate the inequity which exists between those workers who accompany test flights and those who perform similar work but on the ground. It is limited to those workers who are called upon to participate in test flights and is paid only for the time that is actually spent in flight.

The fear has been expressed that the bonus will establish a precedent and that other groups of workers will now demand that they too should receive a bonus for work which they may consider exceptionally hazardous or disagreeable. There was no evidence to show that the bonus which is being paid or has been paid by other companies in the industry has had the disturbing effect which the industry fears will follow in this case if any bonus is awarded.

While admitting that $2.00 per hour is a somewhat arbitrary figure, it is believed that under all the circumstances a bonus of this amount represents a fair and equitable solution to this dispute. Such a solution was, however, not acceptable to either the industry or labor members of the panel and is therefore, the recommendation of the public member only.

In view of the fact that we have been unable to agree upon a recommendation for any specific amount we have not made any recommendation with respect to a retroactive date. The unions' position is that the National Board should adopt Order No. 72 of the West Coast Aircraft Committee which provided that the bonus of $5.00 should be retroactive to July 7, 1943. On this date the unions first presented to the West Coast Aircraft Committee their request for the establishment of a flight bonus. The position of the industry is that there should be no bonus, and hence, if industry's position were upheld, there would be no question of a retroactive date.

Signed by Philip S. Brayton, public member; Garry Cotton and Andrew Leiper, labor members, subject to dissent with opinion on amount of flight pay; R. Randall Irwin and Robert W. Knadler, employer members, dissented with opinion.

Dissenting Opinion of Labor Members of National Airframe Panel

FLIGHT PAY

The majority of the Airframe Panel, public and labor members, are in full agreement that the payment of flight pay to mechanics required to fly is justified but do not see eye to eye as to the amount to be paid.

It now becomes a question as to who is most qualified to determine what is a just rate: The public member of the panel, the Board, or the companies and unions who have established a rate by collective bargaining and whose judgment has been upheld by the Board. In southern California the WCAC, after investigation and hearing, set $5.00 per hour. Their action was upheld by the Tenth Regional Board.

At Denver the Continental Air Lines and the International Association of

Machinists negotiated a rate of $5.00 per hour, which was approved for shake-down or check flights. At the Boeing Aircraft Company, the union and the company negotiated rates of $5.00 for routine shake-down flights; $7.50 for experimental flights on approved ships, and $10.00 per hour on prototype ships. This was approved by the Board. The Board approved $4.00 per hour for this work at the Republic Aviation Corporation, Case No. 2-5905, Nov. 10, 1943 [12 War Lab. Rep. 758].

The North American Aircraft Company, one of the companies in southern California, now pays a bonus for this work that may at times be substantially higher than the $5.00 set by WCAC Order No. 72. North American pays a bonus of 20 hour's pay per week for any week in which an employee is required to fly. Thus, if he flies but 1 hour, he will receive 20 times his hourly rate ($1.45 per hour generally) or $29.00 per hour flight bonus. He must fly a minimum of six hours within the week to bring the rate within that requested here.

The Curtiss-Wright Company has an approved rate of $4.50 per hour for this work. This rate was used at their Louisville plant.

Unlike the approved rates at Boeing's, the employees in this case are asking only one rate and may be required to perform the same work for which Boeing's pay $7.50 and $10.00.

The labor members are of the opinion that the companies and the unions, who are familiar with the requirements, are the best qualified to determine the rate; and the Board has recognized this as a fact by their approval of the rates so arrived at. The justified rate for this work then lies somewhere between $4.00 and $10.00 per hour.

The labor members therefore request that the Board order the rate and effective date as approved by the West Coast Aircraft Committee and the Tenth Regional Board in WCAC Order No. 72.

Signed by Garry Cotton and Andrew Leiper, labor members.

Dissenting Opinion of Employer Members of National Airframe Panel

FLIGHT PAY

Careful review of the voluminous record in this case convinces the industry members of the panel that the unions' petition for a flight pay bonus should be denied, because:

(1) The evidence does not show that there exists an uncompensated hazard involved in production test flights;

(2) Granting the unions' demand, in whole or in part, would be unstabilizing and contrary to wage stabilization policy;

(3) Granting the unions' demand, in whole or in part, would create serious intra-plant inequities, resulting in:

(a) Destruction of the fine balance that has been achieved in evaluating jobs under the West Coast Aircraft wage stabilization program sponsored by the War Labor Board, and

(b) Disruption of the morale of other employees; and

(4) Even if an uncompensated hazard does exist, the bonuses recommended by the public and labor members are several hundred times higher than could possibly be justified on the basis of a scientific evaluation of the risks.

1. No Proof of Uncompensated Hazard

The unions have spent two years gathering evidence in an attempt to prove that there is an uncompensated hazard involved in the routine of production test flying. (More appropriately, this shrould be called "production check flying.") The end result is that the massive record is full of flimsy arguments and dramatic little "scare stories" that appeal, not to reason, but to the emotions.

As stated by the public member, "There is a substantial record before the panel." Yet in all this record, the unions have failed to prove their case. The reason is simple. The hazards are imaginary—not real.

Production flights are strictly routine. They are performed under ideal operating conditions—more favorable than those involved in scheduled airline operations. The planes are strictly conventional production models, the forerunners of which have been exposed to the most strenuous structural and performance tests. The production planes are built under the most exacting standards and thoroughly inspected before they are released for flight. Even the engines are run at full throttle for a considerable period of time on the ground before a plane takes to the air. When it is finally released for flight, it is known definitely that the plane is thoroughly airworthy.

Those familiar with production flying realize that there is no more hazard in making a routine flight around the field in a new, modern, thoroughly proved airplane than there is in driving an automobile to and from work. The operation is comparable to driving a new automobile around the block before accepting delivery.

Because the facts about production flying do not substantiate their claims, the unions were obliged to use such unsound arguments as this: Production test flights are hazardous because fire trucks are located on the flying fields and flight personnel are required to wear parachutes.

Such an argument hardly requires comment. Certainly, cities and towns are equipped with fire trucks; public buildings have fire extinguishers; and steamships are required to provide life preservers. Wherever we are, there are certain hazards against which we take measures to protect ourselves. And we don't ask for a $5.00 per hour bonus as compensation for life's normal risks.

The unions also pointed out that one company occasionally has permitted planes to be flown seven or so miles without co-pilot. This particular type of plane originally was designed for operation with only one pilot, but a second set of controls was added when it was modified for long-range operation over enemy waters. On the short delivery flights mentioned by the unions, fatigue and combat hazards are not present. No co-pilot is required for perfectly safe operation.

The unions further argued that flight hazards have been increased because the industry has had to employ many unskilled workers. They failed to point out that the increase in production has brought tooling, templates, specialization of operations, and improved inspection techniques so that unskilled personnel can do high quality work. In fact, tooling for mass production has brought uniformity of standards and interchangeability of parts and assemblies that previously were impossible. The possibility of human error has been reduced close to a minimum.

These and other stories show the extent to which the unions were obliged to go in an attempt to build a case.

In a desperate effort to impress the Board, one of the unions organized a sitdown strike of flight mechanics; then used this organized strike to show how important it is that mechanics accompany production test flights. Granting the importance of flight mechanics, the Government hardly will allow itself to be intimidated into buying off the union with an unjustified bonus.

Finally, realizing their failure to prove that uncompensated hazards exist, the unions said in their post-hearing brief, "Industry has failed to show that there is not an uncompensated hazard." In our opinion, industry has proved its case. However, whether industry has proved it or not, the burden of proof is upon the unions. They are asking for a substantial wage increase. Their demands should be denied unless they prove their case. This they have not done. The fact is that industry has effectively and painstakingly answered each of labor's flimsy arguments.

The strongest argument of the public member in support of his recommendation is, "That there are hazards in flight which are not inherent in ground work is shown by the fact that the companies take out a life insurance policy to the extent of $10,000 for employees who are called upon to take part in test flights."

The companies for years have maintained blanket coverage for all employees engaged in flying while in pursuit of company business. This coverage includes traveling on scheduled airlines. No one has suggested that because employees traveling by airlines are covered by insurance, they should receive a $5.00 or $2.00 per hour bonus while in flight.

Whereas the public member uses the insurance as an argument in favor of a flight bonus, it can be used just as effectively as an argument against. For instance:

First, the premium paid for this insurance is the proper form of compensation for whatever extra hazard exists, if any. There is no way by which an employee could be compensated adequately for loss of his life. If he should lose it, his survivors are the ones who can be compensated. Insurance provides for that. It is the proper form of flight bonus.

Second, the rates for this insurance have dropped substantially during the last two years. Insurance carriers

are known to be ultra-conservative in appraising risks. Yet, they have dropped their premiums from a range of $2.00-$2.50 per hour to a range of 60-62½ cents during the last two years. This is proof of how safe this type of flying has become.

It should be noted that, when the companies started to insure employees for flight risks and when the unions first made their demand for flight pay, airplane production was in its infancy. During the last two years, the aircraft industry has produced more airplanes than were built during the entire preceding 40 years dating back to the Wright brothers' first flight. The annual rate of military aircraft production in the United States increased from 2,000 to 100,000 units during the last 5 years. The mystery is out of flying, and the Board should so recognize.

The public member quite honestly has stated that his recommendation is based upon his "belief" that hourly paid employees who perform duties in test flights are entitled to a premium. He does not claim that the evidence proves the risk to be worth $2.00 per hour. Only the facts in the record, not the unions' extravagant claims nor the public member's "belief," should persuade the Board to increase the rates of these employees by two to five times their basic hourly rates.

2. Contrary to Wage Stabilization Policy

Increasing the hourly rate from approximately $1.37½ per hour (midpoint) to $3.37½ or $6.37½ per hour while these employees are engaged in production flights cannot be permitted under any provision of the Economic Stabilization Act [16 War Lab. Rep. V; WCDS 9] or under any of the Board's criteria—certainly not under the Little Steel formula.

The public member assumes that a $2.00 bonus is permissible on the basis of industry or area practice.

The fact is that there is no industry or area practice of paying a bonus to hourly employees engaged in production flights. Of the thousands of hourly employees in companies under the jurisdiction of the Airframe Panel, not a single one receives a bonus for production test flying.

Therefore, neither area nor industry practice can be used as an argument to substantiate the unions' request.

Should the Board order a $2.00 or $5.00 flight bonus in the southern California airframe plants, the Board subsequently would be obliged to approve or direct the same bonus in every airframe plant in the country. The result would be an appreciable increase in costs to the Government for checking out production airplanes; or what is almost certain, the disruptive effect of such an unreasonable bonus would force the companies to discontinue the use of hourly paid employees on production flights.

The public member points to the fact that the Board once approved a $4.00 per hour bonus for flight test inspectors at a modification center of Republic Aviation Corporation. Modification center operations are not comparable to manufacturing operations so should not be considered as having a bearing on this case. However, the important point is that Republic does not now send hourly flight inspectors aloft so does not pay a flight bonus.

Boeing, Seattle, is given as an example of a company paying a bonus for production test flying. No hourly paid employees at Boeing have participated in production test flights since Apr. 13, 1945. Production test crews at Boeing now are composed of salaried employees for whom no flight bonus is authorized or paid.

It is also mentioned by the public member that Curtiss-Wright at Louisville "at one time" paid a bonus of $4.50 per hour. Also, that North American Aviation once paid a $5.00 bonus.

The Boeing, Republic, Curtiss-Wright, and North American production test flight bonuses were established early in the war production program and since have been discontinued as a practice. Experience has proved the bonuses to be unsound and unreasonable. No airplane manufacturer has inaugurated the practice of paying flight bonuses during the last two or three years.

Mention is made by the public member of a $5.00 per hour flight bonus recently approved by the National Railway Labor Panel for the Continental-Denver Modification Center. This operation is not under jurisdiction of the National Airframe Panel. Neither the panel nor the companies who are parties to this case know any of the details of the Railway Panel award. So far as is known, the flights at the Modification Center may be of an experimental nature. Although the

growing number of train wrecks indicates that there is a real hazard in traveling by rail, it is doubtful that the Railway Panel would have granted a $2.00 or $5.00 per hour bonus for railway operating personnel. Unless the Board is prepared thoroughly to investigate the Denver case, the Railway Panel award of a flight bonus should be totally disregarded in the consideration of the instant case.

Since neither the labor nor the public recommendation can be sustained on the basis of industry or area practice, a flight bonus can be considered only as an adjustment arising "out of circumstances which are special or unique to a particular plant, company, or industry and which therefore cannot be governed by the usual criterion of industry or area practice," according to the most recent policy established by the Director of Economic Stabilization [24 War Lab. Rep. No. 3, XII].

There is nothing "special or unique" about routine production flights.

In the opinion of the panel industry members, the recommendations of the labor and public members cannot qualify under the Board's criteria for this type of adjustment. According to policy, this type of adjustment "may be granted if it is in equity required to solve a special or unique problem and is therefore not of a precedent making character."

Certainly the granting of a bonus in this case would create a wide-spread precedent for the entire aircraft industry. Further, it would create inequities, as will be shown hereafter. The proposed bonuses are not "a bona fide correction of a peculiar situation involving a gross inequity." Actually the granting thereof would be a subterfuge for a general wage increase for this group of employees.

3. Intra-Plant Inequities

All hourly and salary jobs of the southern California aircraft factories have been carefully evaluated and slotted so that their rates bear a logical relationship one to another. The hourly jobs have been evaluated and slotted in accordance with the Board's directive order of Mar. 3, 1943, which provides a uniform job classification and wage rate schedule "for the purpose of correcting inequalities and gross inequities in wage rates now paid for the same or similar work."

In the opinion accompanying the order, former Chairman Davis said, "The purpose of the new job classification plan is to remove these inequities from the present haphazard wage structure. The first step in the job evaluation plan was to decide upon a list of characteristics common to all jobs and a method of measuring the degree of each of these characteristics for each job. The chosen job characteristics are skill, mentality, responsibility for material and equipment, mental application, physical application, job conditions, and unavoidable hazards. To give a true measure of the value of the work done by a competent workman on each of the classified jobs, each job is evaluated by carefully estimating the degree of these characteristics required to do the work of that job in a satisfactory way. When these evaluations have been completed for all the jobs or groups of jobs, they indicate an appropriate relationship between wage rates that should be paid for the several jobs on the basis of skill, intelligence, responsibility, application, job conditions, and hazards."

To grant a flight-pay bonus would completely upset the balance between the jobs in the SCAI schedule.

Inherent in a sound evaluation plan is the placing of a limitation on the number of points (or amount of money) that is allowable for any one factor. No one factor, such as skill or hazard, is allowed to outweigh all other factors. The proposals of the public and labor panel members are in violation of this fundamental rule. For the Board to sustain either recommendation would be to return to what Chairman Davis characterized as a "chaotic wage structure" in southern California.

To grant a flight bonus not only would create serious inequities between the various hourly jobs but would seriously disrupt the southern California airframe salary structure which has been developed through the application of sound job evaluation principles.

Payment of a $5.00 or even a $2.00 bonus to hourly employees engaged in test flights would boost their earnings to above those of salaried supervisory and professional personnel, thus creating a serious inequity and destroying the morale of the employees in the higher-rated jobs.

As shown by Industry Exh. H, the annual earnings of an average field operations mechanic receiving a $5.00 flight bonus at Consolidated Vultee would be between $6,256 and $7,195, as

compared with an average annual salary of $5,400 for co-pilots, $3,870 for flight engineers, and $3,665 for radio operators.

What would be even more serious is that the earnings of hourly mechanics who accompany production flights would be substantially above the salaries of their assistant foremen and foremen. In fact, the average flight mechanic would receive approximately the same earnings as general foremen and would come close to receiving the annual salary of the superintendent of the flight department. The earnings of a few hourly mechanics actually would exceed the salary of the superintendent of flight operations.

The Mar. 3, 1943, directive order of the Board states, "The * * * provisions are intended to assure a fair opportunity for advancement, without favoritism or neglect, to every employee who, through training, experience, or ability, may qualify for an available higher job." Certainly it was not the intent of the Board to permit certain mechanics to be paid more than personnel in higher-rated supervisory or professional positions.

What incentive would there be for a top mechanic to become a foreman, superintendent, or co-pilot if a promotion would mean a reduction in earnings?

The argument that the hazard factor alone justifies paying hourly mechanics more than their supervisors is fallacious. If the hazard factor were valued so highly, an airline stewardess would receive as much as a superintendent of operations rather than her $125 to $150 per month salary. The fact is that the salary of a superintendent of operations is greater than that of a flight captain who receives in the neighborhood of $750 per month. The differential between the pay for a stewardess and that of a pilot is based on differences in responsibility, skill, and other factors. Both are exposed to the same flight hazards.

The inequity of paying a flight bonus would be particularly apparent to other employees in the same job classification. Imagine the effect on the morale of a group when a supervisor assigns several mechanics to important ground duties at $1.25 to $1.50 per hour and picks out one of the group for assignment to a routine check flight at a rate of $6.25 to $6.50 or $3.25 to $3.50 per hour. Such a situation would be intolerable.

4. Excessive Evaluation

Labor's case is built upon sheer imagination and speculation.

The public member, on the other hand, having concluded that the hourly employees are exposed to an uncompensated hazard, makes a guess as to the proper payment for this hazard.

He says, "In order to justify a premium of $5.00 per hour, it is the opinion of the public member of the panel that there must be a showing that the dangers of flight are many times greater than the hazards described for the Electrician-Maintenance "A", the electroplater, or any other classification. The unions, in the opinion of the public member, have failed to make such a showing."

The same reasoning holds for the proposed $2.00 bonus, as will be shown hereafter. In order to justify a premium of $2.00 per hour, there must be a showing that the dangers of flight are 20 times greater than the risks involved in the most hazardous ground jobs. No such showing has been made.

As an illustration, let us assume that the hazards in flight do exceed the hazards of working around spinning propellers, sticking one's head under a drop hammer or hydropress, or repairing a hot high voltage line.

Just how much more hazardous is flying than performing these risky ground duties?

Is flying twice as hazardous as the most hazardous job on the ground? If so, it is worth 10 cents more. Is it three times as hazardous? If so, it is worth 20 cents per hour more. (The maximum number of points allowed for hazards in the SCAI plan converts to approximately 10 cents per hour.)

A West Coast Aircraft Committee investigator found that the insurance premium rate for aviation mechanics who fly is 3¼ times as much as the rate for mechanics who do not fly. According to the SCAI plan, that would be evaluated at 32½ cents per hour.

Please note that the companies in this case now are paying 60-60½ cents per hour premium for insurance for employees engaged in flight operations. Therefore, they already are paying a higher premium than the hazard is worth. And they are paying it in a way that would be of greatest benefit to those who would suffer most in case of death of an employee from a flight accident. You cannot ade-

quately compensate an employee who is killed, no matter how much money you pay.

The public member has read the description for Mechanic-Field and Service "A" and has come to the conclusion that no extra compensation has been added because of the dangers of flight. He completely overlooks the fact that, when a mechanic is in flight, he is not exposed to ground hazards such as working around moving propellers. He merely trades one type of risk for another. Evaluation points allowed for flight hazards cannot properly be added to points allowed for ground hazards in arriving at a proper evaluation of hazards of flight.

The original SCAI job of Field and Service Mechanic "A" was evaluated at 595 points, placing it in Labor Grade II, paying $1.20-$1.35. The job was reevaluated Sept. 1, 1943, by the West Coast Aircraft Committee at 605 points, placing it just within Labor Grade I then paying $1.25-$1.45, now $1.50 maximum. In both studies, the job was given 45 points for hazards, the maximum allowed under the old plan.

The Restudy Committee on Apr. 19, 1944, agreed to a revision of the SCAI plan, which will allow a maximum of 65 points for the hazard factor. Applying the new maximum number of points for hazards to the field and service job, the total point value would be 625, which is the mid-point for Labor Grade I. There is still leeway for allowing for a greater hazard without putting the value of the job at or over the top of Labor Grade I, indicating that these mechanics now are compensated generously for their job.

The revision evolved by the WCAC Restudy Committee describes the sixth degree of hazard as "Exposure to accident hazard, involving major permanent disability such as loss of arm, hand, leg, hearing, foot, or sight of eye; exposure to accident hazards the probable consequence of which is loss of life." For this degree of hazard, 65 points is allowed, according to the plan. This 65 points converts to a little more than 10 cents per hour.

Since the field and service job, with 65 points allowed for hazard, would fall in the middle of the range of Grade I, the hazard factor already is fully compensated. On the other hand, if a special hazard bonus is granted to these mechanics, the job should be deevaluated by the amount that the hazard factor has contributed to its evaluation. To do so would be to drop the job back from Labor Grade I to Grade II. We are sure that these mechanics would not be pleased with that action.

Conclusion

After a careful study of the entire record, the industry members earnestly recommend that the Board deny the unions' petition because to grant a flight bonus of any amount would be unstabilizing and create serious inequities.

There is no evidence to prove that hazards of production test flying are greater than those to which ground mechanics are exposed.

On the other hand, if the Board is convinced that an uncompensated risk does exist, it should attempt to set the value of the hazards in terms of the SCAI plan. If this is done, the answer is the same. No flight bonus is justified.

Signed by R. Randall Irwin and Robert W. Knadler, employer members.

CHICAGO FLEXIBLE SHAFT CO.—

Decision of National Board

In re CHICAGO FLEXIBLE SHAFT COMPANY [Chicago, Ill.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 1150 (CIO). Case No. 111-5996-D, July 5, 1945 (made public Aug. 23, 1945).

WAGE ADJUSTMENTS—Length-of-service increases

Employees in lower grade hourly rated jobs are entitled to automatic in-grade progression to eliminate intra-plant inequity caused by fact that automatic progression is in effect for comparable incentive workers.

For other rulings see Index-Digest 225.630 in this or other volumes.

JOB CLASSIFICATIONS—Adjustments of classifications

Regional Board's order requiring negotiation of rate ranges around weighted average of present rates in each occupation is amended by elimination of reference to weighted averages and by addition of proviso that negotiated rates should not result in average wage increase exceeding one per cent. Company contended that Regional restriction would require perpetuation of intra-plant inequities.

For other rulings see Index-Digest 75.050 in this or other volumes.

Majority decision of Board amending decision of Regional Board VI (Chicago). Public members concurring: Lewis M. Gill and Dexter Keezer. Employer members dissenting on Pars. II and III: Earl Cannon and Vincent P. Ahearn. Labor members dissenting on acceptance in part of company's petition and on Par. IA: John Brophy and J. A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to rates for nonincentive workers and automatic progression, the petition for review filed by the company in the above entitled case, and having reviewed the merits of the case with respect to these issues, hereby orders:

I. The terms and conditions of employment set forth in the Sixth Regional War Labor Board's directive order of Nov. 23, 1944, in this case shall govern the relations between the parties, with the following modification:

A. Rate Ranges for Nonincentive workers

Par. 2 of the said directive order of Nov. 23, 1944, is hereby amended to read as follows: *

The issue of rate ranges for nonincentive workers involved in this dispute is hereby referred back to the parties for negotiation. The parties shall negotiate rate ranges so as to achieve proper internal balance in the company's wage structure with special reference to the present job values, provided that such negotiations shall involved or by his steward, or by both, as the employee elects, provided that, in all cases in which a grievance is settled at this step without participation of the union steward, the company shall notify the union, in writing, not result in an average wage increase in excess of one cent an hour. Negotiations shall be for not more than 45 days; at the end of such period the parties shall report the results of such negotiations back to the Board for final determination. The rates of women shall be increased to the rates paid men consistent with the provisions of General Order No. 16 [20 War Lab. Rep. XXV; 26 War Lab. Rep. No. 4,000 WCDS 135].

II. Automatic Progression. The said directive order of Nov. 23, 1944, with respect to the issue of automatic progression for lower grade hourly rated nonincentive workers, is affirmed.†

III. Those portions of the petition for review which relates to incentive base rates, women's rates, retroactivity, and grievance are hereby denied.

IV. The terms and conditions of employment set forth in said directive order of Nov. 23, 1944, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board VI (Chicago)

Nov. 23, 1944

I. The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 3, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that:

1. The grievance procedure shall provide as follows:

Grievances shall initially be taken up with the foreman by the employee

* Ed. Note: The Regional Board ordered the parties to negotiate rate ranges for nonincentive workers on findings that the rates requested by the union were above stabilized rates and that the rates proposed by the company would result in lowering the wage scale. It directed negotiation around the weighted average in each occupation because it found that no general increase was permissible. The company claimed, and the Board found, that this restriction would perpetuate intra-plant inequities since two of the labor grades have higher weighted averages than the labor grades immediately above them. The one per cent restriction ordered by the Board in place of the restriction ordered by the Regional Board is in accordance with the limit on reclassification increases contained in the Stabilization Director's directive on fringe issues [23 War Lab. Rep., No. 4, V; WCDS 537]. (Information supplied by WLB staff.)

† Ed. Note: The Regional Board directed automatic progression in the lower grade hourly rated occupations to eliminate an intra-plant inequity arising from such automatic progression being put into effect for workers in lower grade incentive jobs. The Board accepted the company's petition and reviewed the issue on the merits because it constituted a novel question. (Information supplied by WLB staff.)

of the nature of the grievance and its disposition, and the union shall, within twenty-four (24) hours from receipt of such notification, be entitled to take exception to such settlement and to have the grievance taken up through the subsequent steps of the grievance procedure.

2. The issue of rate ranges for non-incentive workers involved in this dispute is hereby referred back to the parties for negotiation around the weighted averages in each occupation. Negotiations shall be for not more than forty-five (45) days; at the end of such period the parties shall report the results of such negotiations back to the Board for final determination. The rates of women shall be increased to the rates paid men consistent with the provisions of General Order No. 16.

3. The issue of the application of an increase in base rates and minimum rates of incentive workers involved in this dispute is hereby referred back to the parties for negotiation for a period of forty-five (45) days from the date of this directive order. As a result of such negotiations, the parties are limited to a minimum average increase of six (6) cents per hour. At the end of the forty-five (45) day period the parties shall report the results of such negotiations back to the Board for final determination.

4. On all jobs in Labor Grades 7, 8, 9, 10, and 11, and 108 to 112, the starting rate shall be the minimum rates for the respective job, and the maximum rate shall be attained after one (1) year by successive steps upward in equal amounts after one (1) month, six (6) months, and one (1) year.

Increases in other labor grades shall be in accordance with past practice.

5. The foregoing wage provisions shall be retroactive to Jan. 12, 1944.

Any employee who has either quit or been discharged between the retroactive date established by this directive order and the date of this order shall receive the amount of the increase for his classification up to the date on which his employment with the company terminated. The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case, even though the 60 days have elapsed. The company shall be obligated to make the payment, if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States, either before, or within 60 days after, the mailing of the joint letter.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. Notwithstanding any other provisions of this paragraph, that part of a directive order of the Regional War Labor Board which continues in effect the terms and conditions of a prior contract which has expired or has been otherwise terminated shall not be suspended or stayed by the filing of a petition for review, but shall be effective according to its terms unless and until the Board, upon consideration of a petition for review, otherwise directs.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect (subject only to the provisions of Par. V) and, in the event a petition is filed with the National War Labor Board through the Sixth Regional Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

V. If a timely application for price relief has been filed with the Office of Price Administration as required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, the provisions of this direc-

tive order which are made the basis for the application shall, in any event, become effective only upon determination by the Office of Price Administration that the cost increases ordered will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

Signed by Edgar L. Warren and John Day Larkin, public members, with opinion; J. B. Beardslee and L. E. Roark, employer members, subject to dissent with opinion on grievances, incentive rates, and retroactivity; and Samuel C. Evett and Paul A. Givens, labor members, subject to dissent on nonincentive rates and progression schedule.

Opinion of the Board

Nov. 11, 1944

GRIEVANCES

WARREN, Chairman:—Of the several issues presented and considered in this case, the dispute between the company and the union over the right of individual employees to present grievances in person and without their collective bargaining representative warrants special attention.

Sec. 35 of the contract entered into between the parties on Apr. 22, 1944, provides as follows:

"All differences, disputes, and grievances that may arise between the Union and the Employer shall be taken up as follows:

"(a) Either between the aggrieved employee and the foreman or the department steward and the foreman or both the employee and department steward and the foreman. If no satisfactory settlement is reached between them within twenty-four (24) hours, the matter shall be referred to:

"(b) The department steward and the chief steward and the plant superintendent. If no satisfactory settlement is reached between them within three (3) to five (5) days, the matter shall be referred to:

"(c) The union representatives and the shop committee on the one hand, and the company's representative on the other. If no satisfactory settlement is arrived at within that time, then the difference, dispute, or grievance shall be submitted to arbitration, as hereinafter provided.

"(d) The parties state that they are unable to agree upon an interpretation as to the meaning of Sec. 9, Subparagraph (a) of the National Labor Relations Act. This agreement, therefore, shall not be considered or construed as covering said matter or as a waiver by either of the parties hereto of any rights, duties, and obligations which they may have thereunder. Each party hereto will, therefore, proceed in connection therewith in accordance with its respective construction and interpretation of said provision without prejudice to the right of the other party hereto to take any and all action which it may and shall have the right to take in the premises."

Sec. 35 (d), as set forth above, renders impossible the effective operation of the grievance procedure in the absence of a definitive resolution of the disagreement stemming from conflicting interpretations of Sec. 9 (a) of the National Labor Relations Act, concerning the role of individual employees and the union in the presentation and prosecution of grievances. The case was certified to the National War Labor Board and referred to this Regional Board to resolve this issue among others.

The positions of the union and the company on the question are irreconcilable. The union contended, in this case, that a uniform grievance procedure should be established to govern the handling of all grievances and that such procedure should make provision for participation by the union in the handling of all grievances at every step of the procedure. The company contended that any individual employee or group of employees, union or nonunion, has the right under the National Labor Relations Act to present grievances to the company without resorting to the union, that the company may receive and act upon such grievances and that, in addition, the company may prescribe a procedure for the determination of such grievances different from the procedure available for employees who desire to be represented by the union in the disposition of grievances.

The question posed in this case has been before the Board on frequent previous occasions. For the most part, the Board has disposed of the matter by directing that a grievance procedure be instituted permitting em-

ployees to present their grievances at the first step of the procedure with or without their union representative, as they may elect, but providing that at all subsequent stages of the procedure grievances shall be handled through union representatves. In one recent case * the Board provided, in addition, that the union shall be notified of all grievances settled between the employees and the management representative at the first step in which union representatives did not participate. In the present case we have gone further and have provided that the grievance procedure, as set forth in Sec. 35 of the agreement of the parties, shall be modified to provide as the exclusive procedure for the handling of all grievances that:

"Grievances shall initially be taken up with the foreman by the employee involved or by his steward or by both, as the employees elect, provided that, in all cases in which a grievance is settled at this step without participation of the union steward, the company shall notify the union in writing of the nature of the grievance and its disposition, and the union shall, within 24 hours from receipt of such notification, be entitled to take exception to such settlement and to have the grievance taken up through the subsequent steps of the grievance procedure."

There is, in our opinion, compelling reason for our action. We believe it to be fully warranted as a matter of law under the National Labor Relations Act and as a matter of sound practice in the administration of industrial relations.

Sec. 9(a) of NLRA

Sec. 9 (a) of the National Labor Relations Act provides that: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargainng in respect to pay, wages, hours of employment, or other conditions of employment: Provided, that any in- (a) in support of its claim that emdividual employee or a group of employees shall have the right at any time to present grievances to their employer." The company, in this case, has relied upon the proviso of Sec. 9 ployees are entitled under the law to present grievances without participation of the exclusive bargaining representative and that the company may prescribe a machinery for the handling of such grievances different from the procedure available to employees who desire to present grievances through their union. As further evidence of the propriety of its position, the company has cited for our attention the decision of the Circuit Court of Appeals for the Ninth Circuit in National Labor Relations Board v. North American Aviation, Inc., 136 F.2d 898, interpreting the proviso of Sec. 9 (a). That case, we admit, lends its authority to the view of the company. We do not, however, believe that the decision of that court (in the only case in which the question has been presented for decision by any court) is binding upon us. This would appear to be so not only because we disagree with the view of the court—a position shared by the National Labor Relations Board which, too, does not acquiesce in the court's decision †—but also because very serious doubt has been cast upon the correctness of the decision in the North American Aviation case by reason of the opinion of the United States Supreme Court in J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332. In the North American case, the court held that employees are entitled, under Sec. 9 (a), to deal with their employer directly and at any point in the settlement of grievances to the exclusion of the duly designated union representative and that the employer may provide a special procedure for the disposition of grievances so presented to him.

Individual Rights

The holding is based upon a literal reading of Sec. 9 (a) and is predicated, in the opinion of the court, upon the supremacy of "the individual right of protest" over the terms of a collective agreement binding upon all employees. The court stated, "It is well to appreciate that the proviso of Sec. 9 (a) is on its face a right presented to the employee. No doubt the reason for this is that, under the scheme of collective baragining a bare majority controls the whole body of employees and that, in this circumstance, the right should be preserved to the

* Matter of Stewart-Warner Corp., Case No. 111-6463-D, decided Aug. 12, 1944.

† Matter of Hughes Tool Co., Case No. 16-C-1018, decided May 27, 1944, 14 L.R.R. 760, supplementing 14 L.R.R. 492.

individual (or a group) to go to his employer with any grievances he may harbor notwithstanding any provision in the collective agreement." Although the court took cognizance of the fact that "there is great opportunity for conflict in the dual handling of grievances," it could "see no legal way of * * * bettering the situation." The decision of the Supreme Court in the J. I. Case situation did not directly deal with the problems presented under the proviso of Sec. 9 (a). It did, however, cover at considerable length the extent of the right of individual employees to treat with their employer to the exclusion of a union certified by the National Labor Relations Board as exclusive bargaining representative under the National Labor Relations Act. The court stated that, while "some employees may lose by the collective agreement" and "an individual workman may sometimes have, or be capable of getting, better terms than those obtainable by the group," the "practice and philosophy of collective bargaining looks with suspicion on such individual advantages" and "advantages to individuals may prove as disruptive of industrial peace as disadvantages. * * * The workman is free, if he values his own baragining position more than that of the group, to vote against representation; but the majority rules, and, if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result." It is, in our view, difficult to accept the views expressed in the North American case, holding the rights of individuals superior to that of the group (at least in so far as grievance problems are concerned), in light of the unambiguous rejection of such doctrine in the J. I. Case decision.

The War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] requires that our decisions "conform to the provisions of * * * the National Labor Relations Act." In passing upon the issue presented in this case, we were required to choose between the conflicting views of the National Labor Retions Board and the Circuit Court of Appeals for the Ninth Circuit in respect to Sec. 9 (a). The decision of the court was so foreign to our own opinion in the matter and so weakened by the contrary force of the J. I. Case decision that we could not view the North American case as binding. Moreover, it should be noted, neither we nor the National Board have ever in the past fully accepted the North American decision as controlling. Both we and the National Board have recognized the advisability of permitting employees to present grievances directly to their employer at the first step of prescribed grievance machinery without participation of union representatives. However, at all subsequent stages of the grievance procedure, provision has been made for union participation in the negotiation and settlement of grievance disputes and in no case have we lent our authority to or countenanced the establishment of a separate machinery for employees who do not desire to be represented through the exclusive bargaining agent.

Union's Rights

We agree with the National Labor Relations Board that Sec. 9 (a) does not sanction the establishment of dual grievance procedures. It does not require argument at this stage, in the history of industrial relations, to establish that a grievance procedure is an appropriate (indeed, necessary) subject of collective bargaining. It is equally clear that, once the employees have, by the choice of a majority, selected a union as their bargaining agent, the union so designated is the exclusive representative of all the employees. Further, as set out in the report of the Senate Committee dealing with the bill which was enacted as the National Labor Relations Act, it is well recognized that "majority rule carries the clear implications that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf after representations have been picked by the majority to represent all" (Sen. Rept. No. 573. 74th Cong., 1st Sess.).* Even less may the employer, after the employees have selected a collective bargaining agent, insist upon the right to deal unilaterally with respect to matters which are appropriate subjects of collective bargaining. Yet, the company here proposed exactly that when it proposed to establish for individual employees a special grievance procedure different from the one to be established for the handling of grievances by the union. Such conduct in effect

* See also House Rept. No. 1147, 74th Cong., 1st Sess.

would remove from the collective bargaining area a vital matter as to which employees, through the exclusive representation of their union, have a right to deal collectively with the employer. Any other view would be in repudiation of the collective bargaining principle, as the courts have repeatedly held. Singer Mfg. Co. v. NLRB, 119 F.2d 131, 136, 137-8 (C.C.A. 7), cert. den. 313 v.s. 595; Great Southern Trucking Co. v. NLRB, 127 F.2d 180, 186 (C.C.A. 4), cert. den. 63 S.Ct. 48; Inland Lime & Stone Co. v. NLRB, 119 F.2d 20, 22 (C.C.A. 7); NLRB v. Whittier Mills Co., 111 F.2d 474, 478-9 (C.C.A. 5); NLRB v. Acme Air Appliance Co., 117 F.2d 417, 420 (C.C.A. 2); NLRB v. Pilling & Co., 119 F.2d 32, 36 (C.C.A. 3). This important principle was, we believe, entirely overlooked by the court in the North American case, for, though it did not doubt that the establishment of a grievance procedure was an appropriate subject of collective bargaining, it nevertheless did not believe that a grievance procedure agreed upon through collective bargaining between employer and union established an exclusive procedure for the handling of the grievances of all employees. It would, in our view, be equally tenable to hold that a collective agreement with respect to wages or hours or other common conditions of employment still left the employer free to establish, unilaterally, different conditions for individual employees without regard to the agreement with the union. Such holding, in our opinion, strikes at the heart of collective bargaining and represents precisely what the Supreme Court condemned in the J. I. Case decision.

Effectuation of Contract

Nor in our judgment does the claimed right of the company to hear and settle grievances of individual employees, without participation by the union, stand upon a better footing. The process of collective bargaining does not stop with the execution of a contract. Bargaining is a continuous process and involves not only the consummation of an agreement but also its application, interpretation, and day to day administration. Indeed, the extent to which the collective bargaining relationship succeeds or fails depends entirely upon the extent to which the employer and the union cooperate to make the contract work. Thus the contract has been described as merely the "general constitution upon which a body of industrial law is built." Golden and Ruttenberg, the *Dynamics of Industrial Democracy*, p. 43. See also, Daugherty, *Labor Problems in American Industry* (1938 Rev. Ed.), p. 452. And that body of law implementing and giving living force and meaning to an otherwise empty, if well intentioned, charter is created almost entirely on a case to case basis through the presentation and disposition of grievances. See, Watkins and Dodd, *The Management of Labor Relations* (1938, 1st Ed.). It is through the successful operation of the grievance procedure that the agreement of the parties attains its highest utility in achieving the substitution of orderly and peaceful adjustment of labor disputes for industrial warfare. It was for this very reason that the National Board has repeatedly expressed its concern over disputes arising out of grievances and utilized its powers to foster effective grievance machinery. See Memorandum to Regional Chairman from William H. Davis, Feb. 1944, "Policy Resolution on Settlement of Grievances," Feb. 28, 1944 [14 War Lab. Rep. XVII; WCDS 268]. Since the settlement of grievances is so vitally tied to the content of the collective contract, the labor organization charged by the employees with complete responsibility for the negotiation of its terms has an interest in the settlement of grievances affecting those terms (as it has in all conditions of employment whether or not specifically embodied in the contract) which cannot be overemphasized. Its stake in the total situation is certainly not less than that of the employer. Yet to permit grievances to be settled between an individual employee and his employer to the exclusion of the union entitled by law to represent all of the employees is to relegate the union to a distinctly inferior position and to assume that its interest in the contract, once negotiated, is negligible. Our experience in the field of labor relations has provided us with sufficient information at the least to know that the intention of any contract provision may be completely perverted by a process of interpretation or application starting with what may appear at the time to be only an isolated and trifling grievance. Emasculation of this kind can only be encouraged and at the least is more likely to occur through a process of grievance settlement in which the union responsible for framing the contract is excluded. Out of sheer ignorance of his

contract rights alone, an employee may acquiesce in the settlement of his grievance the result of which may fix the rights of all other employees to their serious prejudice. Common sense alone would appear to require some effective voice by the collective bargaining representative in decisions which may have such effect.

Protection of All Parties

It has, of course, been argued that, to permit the bargaining agent absolute freedom in the presentation and disposition of grievances may lead to abuse; the union may, for example, use such power to discriminate against nonunion employees or to hold a rebel in line. We are not unaware of such possibility. But, in our view, it was exactly for such kind of reason that the proviso to Sec. 9 (a) was enacted. Under that proviso, any individual may present grievances to his employer directly, thereby avoiding any possibility of suppression by the union. Moreover, we believe, as does the National Labor Relations Board, that the aggrieved employee may, at any stage of the grievance procedure, appear in his own behalf. This does not, however, mean that the collective bargaining representative can be excluded from the negotiation and settlement of the grievance. So to hold, we think, would be to extend the language of the proviso in complete distortion of the basic premises upon which the National Labor Relations Act is founded.

The procedure which we have prescribed in our order conforms with the meaning and intent of the National Labor Relations Act and satisfies the needs of this case. Under that procedure, the employee may, in the first instance, present grievances directly to the appropriate management representative or through his union representative, as he may elect. Where he chooses the former course, the grievance may be settled between the two. We have not seen fit to require participation by union representatives at this point, not because they are disentitled to such participation under any provision of law, but because we believe it not always feasible or desirable that the union be present at this point. Many grievances arise during the course of the day which can be settled on the spot and in a matter of minutes. It should not, therefore, be necessary to formalize or exaggerate such situations by any requirement that the union be called in. On the other hand, since any settlement may have extensive implications, our order requires that, in all cases in which grievances are settled at the first step without union participation, the union shall be notified in writing of the nature and disposition of the grievance and shall have 24 hours within which to register its exception to the settlement and have its position considered and the matter treated as unsettled until finally disposed of through the subsequent steps of the grievance machinery. At all stages, of course, the aggrieved employee may be present and participate in the presentation and disposition of his complaint. This procedure, we believe, provides full protection of all parties at interest, is entirely consonant with the National Labor Relations Act, and secures a sound machinery for the effective treatment of grievances.

Dissenting Opinion of Employer Members

GRIEVANCES

BEARDSLEE and ROARK, Employer Members:—The industry members of the Board dissent to the grievance procedure ordered by this Board for two (2) reasons:

1. It is contrary to the law established by the Circuit Court of Appeals for the Ninth Circuit in National Labor Relations Board v. North American Aviation, Inc., 136 F. (2d) 898, with respect to the meaning of Sec. 9 (a) National Labor Relations Act. It is not within the province of this Board to determine whether or not that law is good law or bad law. It is within the province of this Board to follow that law, and it is the duty of this Board so to do, if that law is applicable, for the reason War Labor Disputes Act, Sec. 7 (a) (2) [9 War Lab. Rep. VII; WCDS 5] requires this Board and the National Board to conform to all applicable provisions of law. The majority opinion admits the said law is applicable but does not believe the said law is binding upon this Board because the majority opinion disagrees with the law. That is violation number one of the War Labor Disputes Act Sec. 7 (a) (2). The majority opinion attempts to justify that violation number one by a reliance upon the dictum (which is not the law) in the J. I. Case v. National Labor Relations Board, 321 U.S. 332. That is violation number two of the War Labor Disputes Act

Sec. 7 (a) (2) for the reason the majority opinion admits the law in the North American Aviation, Inc., case is applicable and should be followed.

2. If the law in the North American Aviation, Inc., case is not applicable and it is the duty of this Board to provide for terms and conditions to govern relations between the parties, then those terms and conditions shall be fair and equitable to employer and employee under all the circumstances of the case, as provided by War Labor Disputes Act, Sec. 7 (a) (2). The grievance procedure ordered by this Board is not fair and equitable to employer and employee under all the circumstances of the case for the reason there is a repugnancy therein; it provides that a grievance may be settled to the satisfaction of the employee and the foreman in one breath, then, in the next breath, it provides that a grievance may not be settled to the satisfaction of the employee and the foreman because the union shall be entitled to take exception (without qualification or limitation) to such settlement, even though such settlement is to the satisfaction of the employee and the foreman, and to have the grievance taken up through the subsequent Steps b, c, and d, of the grievance procedure. The integrity of collective bargaining is jeopardized by such an unlimited unilateral proviso.

Report and Recommendations of the Panel *

July 31, 1944

THE PARTIES

The Company

The Chicago Flexible Shaft Company has been in business since 1897 and before the war manufactured electrical household appliances, industrial heat-treating furnaces, sheep and cattle shearing and clipping machinery, and other civilian products. As a result of the war, it has been producing armor piercing shot, cannon feed mechanism, high explosive shells, and other war products. Presently it is employing approximately 1,700 employees, of whom about 1,400 are involved in this case.

The Union

The United Electrical, Radio, and Machine Workers of America, Local No. 1150 (CIO), is an amalgamated local having 20 shops comprising its present membership.

HISTORY

The union was certified as the collective bargaining agent by the National Labor Relations Board on Aug. 15, 1943. Negotiations were carried on for a first contract until Oct. 25, 1943, when the union requested the help of the United States Conciliation Service. Some of the previously pending issues were disposed of in conciliation, but questions concerning the establishment of a job classification and grievance procedure remained unsettled.

The dispute was certified on Jan. 12, 1944.

After the parties had filed their briefs in this case, but before the panel hearing, they entered into an agreement in writing dated Apr. 22, 1944, covering all undisputed issues. This contract contained new provisions relating to vacations, and, because of the imminence of the vacation period and the fact that approval of the changes was necessary, the parties requested the panel to make an interim panel report on the subject of vacations and vacation pay.

The panel issued an interim report dated May 2, 1944, recommending approval of the new vacation schedule.

ISSUES

As a result of the efforts of the parties, the contract has eliminated all but the following issues:

I. Grievance procedure,

II. Job classification and rates, and

III. Retroactivity.

[Ed. Note: Issue I, discussed in the panel report at this point, is omitted.]

II. Job Classification and Rates

At the time the briefs were filed in this case, a job classification was being prepared. The briefs, therefore, did not disclose very much of a dispute other than to indicate that the union had requested a job classification and the establishment of rates and that the company was undertaking to furnish it.

By the time of the panel hearing, the company had prepared and furnished a job classification (company's Exhibit "A"), which also included proposed rates.

The job classification was worked out with the union, and the panel

* Ed. Note: Only that portion of the panel report relating to base rates of incentive workers and ingrade progressions is reproduced.

understands that the union takes no exception to the job classification.

The union, however, does not agree to certain of the proposed rates and the method of progression.

The whole matter of job classification and rates then is boiled down to these questions:

(i) Whether certain nonincentive job rates (shown in company's Appendix II, Table II) should not be increased above the company's offer by the amounts requested by the union;

(ii) Whether incentive workers should be paid the same base rates as those paid to nonincentive workers;

(iii) Whether the company's proposal on merit and length of service increases should not be modified to meet the union's demand for increases based on length of service only.

(i) Nonincentive Job Rates

(a) Union's Position—The union takes the position that the rates described by the company in Appendix II, Table II for male nonincentive jobs, Labor Grades 1 to 10 inclusive, and female nonincentive jobs, Labor Grades 107 to 111 inclusive, should be increased by the amounts shown by the following table:

Labor Grades	Company Offer Min.	Company Offer Max.	Union Demand Min.	Union Demand Max.
1.	$1.35	$1.60	$1.40	$1.60
2.	1.25	1.55	1.35	1.55
3.	1.15	1.50	1.30	1.50
4.	1.00	1.30	1.20	1.40
5.	.95	1.20	1.10	1.25
6.	.90	1.10	.95	1.15
7.	.85	1.00	.90	1.05
8.	.85	1.00	.90	1.00
9.	.75	.90	.85	1.00
10.	.75	.90	.78	.90
107.	.80	.95	.85	1.05
108.	.80	.95	.80	.95
109.	.70	.85	.75	.95
110.	.70	.85	.70	.85
111.	.65	.80	.70	.80

These labor grades appear in the company's Exhibit "A" Job Classification.

The union asserts that its proposed rates are consistent with prevailing rates in the vicinity and that the rates suggested by the company are below average.

(b) Company's Position—The company contends that the rates suggested in its plan are above the tested rates approved by the Board and are consistent with the rates paid in the industry. The company further asserts that these rates are properly related to each other and that any change in any one or several of them would throw the entire structure out of line.

(c) Discussion—Comparison of the rates for these grades with the T-rates approved by the Board discloses that the company's rates compare favorably with the T-rates and in a number of cases exceed the T-rates by a substantial margin, even allowing an extra five cents per hour for certain jobs because they relate to the production of ordnance. The panel is of the opinion that no evidence has been submitted to it justifying a departure from the rates proposed by the company.

(d) Recommendation—For the foregoing reason, the panel is of the opinion that the rates proposed by the company should be approved.

[Ed. Note: Par. (ii), discussed in the panel report at this point, is omitted.]

(iii) Merit and Length-of-Service Increases

(a) Union's Position—The union suggests that [for] all jobs, both men and women, in Labor Grades 7, 8, 9, 10 and 11, shown in the company's Exhibit "A," the starting rates should be the minimum rates for the respective jobs, and the maximum would be attained after one year through successive step-ups of one month, six months, and one year, in equal amounts for each step-up. The union further proposes that, for men's labor grades above Grade 7, the maximum should be reached in 2 years, in 6 successive steps in equal amounts in 4, 8, 12, 16, 20 and 24 months.

(b) Company's Position—The company contends that increases should be based not only on length of service, but on skill, adaptability, job knowledge, dependability, and attitude as to some jobs, but agrees with the union as to incentive workers in Labor Grades 7 to 11, inclusive, and 108 to 112, inclusive. It agrees in principle with the union as to these particular incentive jobs but does not agree to the rate of acceleration requested by the union.

The company feels that the union's request amounts to granting an increase of 33⅓ per cent at the end of

the first month and 66⅔ per cent of the wage range increase at the end of six months, while under the company's plan, an increase of approximately 57 per cent of the range is given at the end of the first month, a total of 83½ per cent at the end of six months and the complete 100 per cent at the end of one year. The company contends that this plan was approved by the Board in February 1943. The company further calls attention to the fact that the National Board, by General Order No. 31 [23 War Lab. Rep. No. 1, IV [26 War. Lab. Rep., No. 4, VII]; WCDS 143], recognizes both automatic length of service increases and merit increases.

(c) Discussion—This issue was raised by the union during the panel hearing, and following the hearing, the union addressed a letter dated May 4, 1944, in which it outlined its request as hereinbefore set forth. It was not shown that the proposal by the company was inequitable among employees, or unfair. The principal point seems to be that the increases should be automatic and not governed by considerations of merit.

The panel is unable to agree that various merit factors, such as adaptability, should not be invoked. It is only natural that some persons are more adept, learn more quickly, and become more efficient more rapidly than others. It would thus seem to be inequitable to establish a system of automatic increases where such factors are important.

If any individual is aggrieved by not receiving an increase at the time he merits it, his recourse is through grievance procedure.

(d) Recommendation—For the foregoing reasons, the panel is of the opinion that the union's suggestion should not be accepted and the progression outlined in the company's exhibits should be approved.

[Ed. Note: Issue III, discussed in the panel report at this point, is omitted.]

Signed by Ralph J. Drought, representing the public; Frank G. Humecki, representing employers; and Abe Feinglass, representing labor, subject to dissent with opinion on retroactivity and progression.

Dissenting Opinion of Labor Representative

[Ed. Note: Issue III, discussed in the dissenting opinion at this point, is omitted.]

PROGRESSION

I dissent from the recommendation on progression for the following reasons:

The company, in its letter of May 16 to the panel, agrees in principle with the practice of automatic increases from the minimum to the maximum of the wage rate, however, only for incentive workers. No mention is made by the company of its practice with relation to day workers falling in the comparable labor grades.

Also, the company agrees to the practice only to Labor Grades 7 to 11, inclusive, and 108 to 112, inclusive, leaving without this practice the labor grades in the higher and more skilled classifications.

The observation to be made firstly is that a practice which is considered to be proper and fair by the company as applied to incentive workers, must of necessity be proper and fair to day workers for comparable jobs. Secondly, in relation to the higher skilled jobs, when in consideration of the higher degree of skill required for such jobs, a greater length of time is permitted for reaching the maximum from the minimum. The principle, however, remains the same—the principle originally determined by the company to be fair with relation to the lower paid jobs.

In so far as the company's present practice of merit increases indicates a satisfactory progression system from the minimum to the maximum, I can agree with such practice provided it is extended to include all workers, whether incentive or day, in all categories, in all degrees of skill; provided, further, that the union's proposal for automatic length-of-service increases for men's labor grades above 7 be attained in two years.

Signed by Abe Feinglass, representing labor.

BELL AIRCRAFT CORP.—

Decision of National Board

In re BELL AIRCRAFT CORPORATION [Marietta, Ga.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 10 (CIO). Case No. 111-10667-D, July 10, 1945 (made public Aug. 23, 1945).

WAGES—GOING WAGE RATES—Airframe industry—Industry v. area rates

Southern airframe plant is directed to change present wage structure to make it substantially identical with that of southern California aircraft industry since, among other things, all but one of major airframe companies in Southern area, which are within jurisdiction of Airframe Panel, maintain wage scales at or above SCAI levels. Order includes substantial increases for least skilled classifications, despite contention that such increases would be unstabilizing in low wage area.

For other rulings see Index-Digest 250.220, and 75.050 in this or other volumes.

WAGES—JOB RATES—Overlapping jobs—Transferees

Union's request that, when employee's normal work assignment overlaps two or more classifications, he should be paid rate for highest classification is denied. As proposed by company, when it can be shown that such work assignment overlaps two or more classified occupations, employee's classification may be submitted to grievance procedure.

Employee assigned to higher job classification should receive not less than minimum rate of pay for higher classification. Employee may be assigned to classifications with lower pay only if (1) he is unable to meet requirements of present job, (2) sufficient work is not available in present job, or (3) change is made at employee's request.

For other rulings see Index-Digest 60.856, 275.130, and 275.500 in this or other volumes.

UNION SECURITY—Denial as strike penalty

Union which engaged in wartime strikes is not entitled to union-security order. Denial is without prejudice to right of either party to ask for reconsideration six months after date of order.

For other rulings see Index-Digest 165.540 and 190.465 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date—Certification date of dispute

Wage adjustments directed by Board in dispute over first contract should be made retroactive to certification date of dispute.

For other rulings see Index-Digest 225.338 in this or other volumes.

Majority decision of Board amending recommendations of National Airframe Panel. Opinion by Jesse Freidin, public member. Public member concurring: Lewis M. Gill. Labor members dissenting on Pars. A, B 5, 11(a), and 12: Neil Brant and Paul Chipman. Employer members dissenting with opinion on Pars. B 1, 2, 3, 6, and 14: Walter Knauss and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, and the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

A. Union Security

The union's request is denied without prejudice to the right of either party to ask for reconsideration of this issue after the lapse of six months from the date of this directive order.

B. Wages

1. The parties are directed to slot all jobs in the collective bargaining unit into ten (10) labor grades, ranging from $.75 to $1.50 per hour, in such a manner that, with the exception of the increases resulting from the new schedule of common labor as set forth in Par. 3 below, there is no resulting increase in the weighted average of job rates.

2. The parties are directed to report to the Board 30 days after receipt of this directive order with regard to the progress of their negotiations.

3. Employees classified in jobs now slotted in Labor Grades 4 and 5 shall be hired at the rate of $.65 per hour and shall be advanced in increments of $.05 per hour every four weeks to the maximum rate of $.75 per hour.

4. With regard to trainee rates, the parties shall adopt the following provision:

The minimum rate for beginners without previous training or factory experience shall be $.65 per hour, which rate shall be advanced $.05 per hour after each interval of four weeks' employment until the minimum working rate of $.75 per hour shall have been attained. Beginners with previous training or factory experience shall, immediately upon hiring, be classified in the job appropriate to their training and experience.

Any beginner who, within the first 12 weeks of his employment, has not already been assigned to an established job classification shall be entitled to a review of his qualifications to determine the job classification to which he shall be assigned, and he shall be classified accordingly.

5. The union's request for automatic progression is denied.

6. The union shall have the right to negotiate with the company appropriate standards to be followed in making merit increases within the rate ranges. Once the merit plan has been established, the company shall be permitted to apply the standards of the merit plan. Any complaints as to the company's action may be filed through the contract grievance procedure. Following a review, each employee and the union shall be notified whether or not he has received a merit increase and the reasons therefor. Compliance with this provision will be satisfied by a written notice to each employee and the union as to whether or not the employee has been awarded a pay increase following each review. In the event a grievance is filed, the employee and the union shall be entitled to a full statement of the reasons for the action. Such statement need not be in writing but should specify which standards of performance the employee has failed to meet.

7. Any new merit increase plan shall not operate to permit the granting of more merit increases than those permissible under the existing merit plan or under General Order No. 31 [23 War Lab. Rep. No. 1, IV; 26 War Lab. Rep., No. 4, VII; WCDS 143] whichever is the greater.

8. The union's request with regard to the due date of automatic increases is denied.

9. If the rate for any job is reduced as a result of this directive order, employees classified in such job shall not have their rates reduced as long as they are employed within the job classification.

10. Any new job hereafter to be created shall be classified, evaluated, and assigned to the appropriate labor grade through the procedure of collective bargaining and in proper relation to the jobs already assigned.

The following procedure shall be followed when a new job is introduced. The company shall advise the union of the new classification and shall provide the union with a job description and evaluation of the new job and shall assign the job into a labor grade on a temporary basis. Within 30 calendar days after a production employee has been placed on the new job, the union committee and the company shall, through the procedure of collective bargaining, assign the job to the appropriate labor grade as outlined above. In case of a dispute, the matter shall be treated as a grievance and handled as such under the grievance machinery of the contract. When the job is assigned to its appropriate labor grade, whether such assignment be made by negotiation or through the grievance procedure, such classification and its rate shall then become part of the wage agreement, and the labor grade so designated, if higher than the temporary labor grade, shall be applied retroactively to the date the production employee started on the job.

11. (a) The union's request with regard to overlapping classifications is denied.

(b) When it can be shown that the work assignment of an employee overlaps two or more classified occupations, such an employee's classification may become the subject of a grievance.

12. The union's request with regard to rates for leadmen is denied.

13. The parties shall adopt the following provision:

C. Change of Status

(a) An employee who is assigned to a job classification which calls for a higher rate of pay shall receive at least the minimum rate of pay for the classification to which he is assigned for the full period of his assignment.

(b) An employee may be premanently assigned to a job classification which carries a lower rate of pay only if he is unable to meet the requirements of his present job or in case sufficient work is not available in his present classification or in the event that he requests reassignment to an

available vacancy provided that such assignment is not inconsistent with the contractual rights of another employee.

14. All wage adjustments resulting from this directive order shall be made retroactive to Sept. 6, 1944.

15. The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby as ordered by the National War Labor Board.

Opinion of the Board

Aug. 4, 1945

RATE RANGES

FREIDIN, Public Member:—Following the recommendations of the National Airframe Panel, the Board has provided a rate range for common labor and unskilled jobs of 65 cents to 75 cents per hour, with automatic increases from the minimum to the maximum of the range of 5 cents each 4 weeks. The parties are directed to slot all jobs within the collective bargaining unit into 10 labor grades, ranging from 75 cents to $1.50 per hour, in such a manner that, with the exception of the increases resulting from the new schedule for common labor and related classifications, no increase in the weighted average of job rates will result.

This action of the Board brings the company's wage structure substantially in line with the southern California airframe industry wage structure which prevails in the airframe industry, including that portion of it located in the south. It follows Board decisions in other airframe cases. (See for example, Consolidated Vultee Aircraft Corp., Miami, Fla., Case No. 111-5442-D, Aug. 23, 1944; General Motors Corp. (Fisher-Memphis Aircraft Division), 21 War Lab. Rep. 906.)* The decision consequently would not call for a majority opinion were it not for the fact that the dissenting opinion has completely omitted any mention of the facts upon which the majority relied in reaching its decision. This opinion will consequently undertake to state only the major consideration which prompted the Board's action:

(a) With the exception of the Bechtel-McCone Corporation in Birmingham, Alabama, all major airframe companies in the southern area of the United States which are within the jurisdiction of the National Airframe Panel maintain wage scales at or above the SCAI wage levels. For the Bechtel-McCone Corporation the Board has recently approved labor grade rate ranges approximating those provided for in the SCAI schedule. (Case No. 111-7162-D, Feb. 1, 1945). Based upon job descriptions, comparison has been made between Bell's present rates and the SCAI rates. Covering 17,400 employees in 149 jobs, this comparison reveals that the average of the mid-points of the company's rate ranges is 4.1 cents below the mid-points of the SCAI rate ranges. This disparity is concentrated nearly exclusively in the rates for common labor and the relatively unskilled jobs in labor grades 4 and 5, that is, the grades to which our order is directed.

(b) The almost universal practice in the airframe industry, recognized time and again by the Board, is to fix the minimum rate for common labor (and for related jobs) at a point no lower than the maximum of the trainee rate range. (Consolidated Vultee Aircraft Corp. (Fort Worth, Texas), 25 War Lab. Rep. No. 5, X; North American Aviation, Inc. (Dallas, Texas), 17 War Lab. Rep. 842.)

The trainee rate range at this plant of the Bell Aircraft Company is 65 cents to 75 cents per hour. On the basis of past Board practice, therefore, a strong argument could be made, was in fact made, by the union to fix the minimum of the common labor rates range at 75 cents instead of 65 cents as our order provides.

(c) In 1943 when the Bell plant was opened in Marietta, the common labor rate was set at a point approximately 15 cents above the going rate for common labor in the area. That differential has been almost entirely eliminated in the intervening two years. Our action in this case restores the relative position of the company.

(d) The common labor rate at the Atlanta plant of the General Motors Corporation is now 89 cents per hour; prior to the war the common labor rate at the Atlanta plant of the Ford Motor Company was 95 cents per hour,

* In the latter case, the Board ordered all new hires to be at 60 cents per hour with automatic increase to 75 cents per hour in 90 days although the single bracket rate for common labor in Memphis was 50 cents.

with every reason to believe that this rate will be continued after the war. The record contains no evidence suggesting that these rates have had an unstabilizing effect in the area.

(e) And finally, the dissenting opinion's reference to the Regional Board's action in the Firestone case [24 War Lab. Rep. 322] conveys the impression that, on the basis of the Airframe Panel's recommendation in this case, the Regional Board directed an increase in the Firestone rates. The fact is that the Airframe Panel's recommendation was relied on by the Regional Board not, as the dissenting opinion implies, for the purpose of directing an increase in Firestone rates, but for the purpose of reducing a higher rate schedule that the Firestone Company and another local of this same union had agreed upon.

This plant is engaged in producing B-29 bombers. It is an important part of the airframe industry whose "rare and unusual" status and whose priority in regard to manpower and materials was long ago established and is presently acknowledged. The dissenting opinion describes as "futile" the policy of the Board to isolate airframe rates and preclude their use in connection with other companies outside the industry. The Firestone case does not, as we have already pointed out, support the dissenter's cynicism. Regional Boards have respected the injunction. So long as it remains National Board policy, there is no doubt that they will continue to do so.

While area considerations may properly be taken into account in appraising the fairness and adequacy of an airframe company's wage structure, we do not believe that they are necessarily to be given, as the dissenting opinion asserts they should be, conclusive weight. This is particularly true where, as here, the Bureau of Labor Statistics survey, upon which the dissenting opinion exclusively relies, discloses that 17 per cent of the companies in the area pay common labor rates of 45 cents per hour or less, more than 55 per cent have common labor rates of 50 cents per hour or less, and more than 98 per cent have common labor rates of 55 cents per hour or less. We believe that it is entirely appropriate in such a situation to judge airframe intra-plant rate relationships more on the basis of the SCAI schedule, which obtains in the great bulk of the airframe industry, than on the basis of area rates, the reliability of which as wage setting guides are considerably lessened by the fact that more than 62 per cent of the companies covered by the survey pay common labor rates which, under current Board policy, would be regarded as substandard.

Dissenting Opinion of Employer Members

July 27, 1945

RATE RANGES

KNAUSS and CANNON, Employer Members:—The action of the public-labor majority in ordering an increase of 15 to 19 cents in this company's unskilled labor rate range, in our opinion, is contrary to the Government's wage stabilization policy and cannot be supported by any of the Board's criteria.

For the least skilled occupations, the majority has voted to order an increase from 50 to 65 cents in the minimum and from 56 to 75 cents in the maximum of the range, with automatic progression to the top in 60 days.

Further, this order would telescope into the 65- to 75-cent range the rates of laborers, helpers, and trainees for semi-skilled occupations. With automatic progression in two months in place of the present merit ranges, this in effect would establish a common labor rate of 75 cents for the Atlanta area.

In addition to changing from merit to rapid automatic in-grade progression, the Board's order will change the Bell rate structure as follows:

Job Classification	Old Range	New Range
Trainees for Semi-Skilled Jobs	$.65-.75	$.65-.75
Helper-Production, Material Handler, Anodizer B, Degreaser, etc.	.50-.65	.65-.75
General Laborer, Janitor, Sweeper, Elevator Operator, etc.	.50-.56	.65-.75

No change is ordered for tool room and other highly skilled jobs which have a range of $1.25 to $1.50. The range for skilled assemblers and production machinists remains at $.95 to $1.25. Top riveters and "B" class assemblers and installers continue to have a range of $.75 to $.95. The trainee classification indicated in the table above at a rate of 65 to 75 cents corresponds to the "C" classification in other airframe rate structures.

It is clear that the majority's action in this case with respect to unskilled labor rates will be highly unstabilizing to area rates. That this case happens to involve an aircraft plant is no excuse for disrupting the entire labor market in this area.

Let us examine the background.

When the Bell plant was located by Army Air Forces authority at Marietta, it was accorded the customary "rare and unusual" wage treatment which made it possible for the airframe industry to secure adequate manpower. The wage structure was set at a level to attract personnel into the lower classifications from the local labor market area and, at the same time, recruit and hold skilled workers not then available in the Atlanta area. Those objectives are now an accomplished fact.

Since the existing common labor rates already are high enough to meet war manpower needs, no valid reason remains for further boosting the wages of these employees above the going rates in the area.

Therefore, the Board should not order further increase that will seriously disrupt the economy of the area.

As a basis of comparison, let us look at the cold figures. Here are the results of a survey of common labor rates in the area, as furnished by the Fourth Regional Board.

Atlanta Common Labor Rate Fluctuations

(By Bureau of Labor Statistics)

	Spring 1943			Spring 1945		
Hourly Wage Rates	Companies	Per Cent of Companies	Accumulative Per Cent of Companies	Companies	Per Cent of Companies	Accumulative Per Cent of Companies
$.17½	2	1.2	1.2	0	0	0
.20	1	.7	1.9	0	0	0
.22½	0	.0	1.9	0	0	0
.25	2	1.2	3.1	0	0	0
.27½	0	.0	3.1	0	0	0
.30	32	20.6	23.7	0	0	0
.32½	2	1.2	24.9	0	0	0
.35	27	17.4	42.3	1	1.16	1.16
.37½	5	3.3	45.6	0	.00	.00
.40	66	42.2	87.8	1	1.16	2.32
.42½	2	1.2	89.0	2	2.32	4.64
.45	11	7.2	96.2	11	12.86	17.50
.47½	1	.7	96.9	7	8.12	25.62
.50	3	2.4	99.3	26	30.16	55.78
.52½	0	.0	99.3	10	11.74	67.52
.55	1	.7		26	30.16	97.68
.57½	0	.0		1	1.16	98.84
.60	0	.0		1	1.16	
.62½	0	.0		0	.00	
.65	0	.0		0	.00	
.67½	0	.0		0	.00	
.70	0	.0		0	.00	
	155	100%	100.0	86	100%	100.00

This table shows that 84 out of 86 companies surveyed pay common labor 55 cents and less. One pays 57½ and one pays 60 cents. Industry members of the Airframe Panel recommend a merit range of 55 to 65 cents. Certainly this is the greatest advantage that the Board could possibly justify giving an airframe plant over and above other industries in the area.

Industry members of the Atlanta Board, supported by one public member, have persuaded us that a more liberal treatment of such a large segment of the labor market of that area will endanger the continuing production of war materials in textile plants, and they point out that 80 per cent of the cotton tire cord fabric of the entire country is manufactured within 75 miles of Atlanta.

This case demonstrates beyond doubt the futility of a theory of the Board that it can isolate unstabilizing rates. The majority report of the panel says: "It has been the policy of

the Board to isolate airframe rates in the community and not to permit other companies outside the industry to use such rates as a basis for further wage adjustments in their own plants. * * * The National Board has instructed its regional boards not to include airframe rates in wage surveys upon which area brackets are based."

Nevertheless, the Atlanta Board, upon advice by telephone of the pending recommendation of the Airframe panel in the Bell case on May 2 and 4 approved a labor rate of 65 to 75 cents for Firestone Tire and Rubber Company (Aircraft division) in Atlanta. On June 29, the order was interpreted as meaning that the rate should be "whatever top rate is now in effect or is subsequently ordered at the Marietta plant of Bell Aircraft" for "direct labor." And the labor members of the Atlanta Board compare the Bell rates only with those which pervailed in automotive plants for the very small number of employees classified as laborers, disregarding another mandate of the Board that automotive rates should not be considered in setting airframe rates.

We concur in the comments of Public Member Caldwell and Industry Members Constangy and Sprague of the Atlanta Regional Board, who said, in part:

"If the common labor rate at the Bell plant is set at 75 cents an hour as contemplated by the Airframe Panel's recommendation, it will not only be much higher than that of its competitors for labor in the Atlanta area, both war and postwar, but it will also interpose, in our judgment, a substantial deterrent to the Bell Company's continued operation of this plant when its war usage has been completed. * * * We do not advocate that the common labor rates at the Bell plant be substandard rates. We believe they should be in line with the higher rates in the area. But they should not be so high as to be out of line.

"A rate range of 55 to 65 cents for common labor in this plant would maintain the wage rate relationship which has existed between this plant and others in the area and would not be unstabilizing either in terms of National Board policy or local area practice and would not unduly prejudice the possibility of postwar operation of this plant."

Report and Recommendations of the National Airframe Panel

May 10, 1945

BACKGROUND

The Georgia division of the Bell Aircraft Corporation is located in Marietta, Ga., about 18 miles from Atlanta. The Marietta plant is engaged exclusively in the manufacture of B-29 bombers for the United States Government.

Local 10, UAW (CIO), was certified on May 3, 1944, as the exclusive bargaining agent for the division's production and maintenance workers, including trainees, inspectors, and firemen.

This dispute arose out of the negotiations between the parties over the terms of their first collective bargaining agreement. On Sept. 6, 1944, the Secretary of Labor certified the case to the Board. A hearing before the National Airframe Panel was held on Dec. 5, and 6, 1944.

ISSUES

The following issues were in dispute:

1. Union security (union shop and check-off),
2. Wages,
(a) Labor grade rate ranges and job classifications,
(b) Trainee rates,
(c) Classification of employees,
(d) Automatic progression,
(e) Due date of automatic increases,
(f) Rates in excess of maxima,
(g) Classification of new jobs,
(h) Overlapping classifications,
(i) Rates for leadmen,
(j) Transfers, and
(k) Retroactivity.

These issues will be discussed in the order listed.

1. Union Security

Position of Parties

The union requested the inclusion in the collective bargaining agreement of provisions for a union shop and also for compulsory check-off of union dues, initiation fees, and assessments. It sought to justify its request for a union shop on the following grounds:

"1. It will promote union discipline.

"2. The union is of proved responsibility.

"3. The security of the union is threatened by rival organizations employing race hatred issue.

"4. It will release union officials for performing functions in union-management relations important to the war program."

The union requested inclusion in the collective bargaining agreement of the following check-off provision:

"The Company will deduct from the pay of each employee covered by this agreement all union initiation fees, dues, and assessments. All deductions shall be made during the first pay period of each month provided that the new employees shall have received at least forty (40) hours' pay prior to the pay period in which their first union deduction is made. A check for all such monies shall be forwarded to the designated officers of the Union by the fifteenth of said month. (It is understood that any employee who has not worked forty (40) hours or more in any month shall receive a refund for that month's dues and an out-of-work receipt from the financial secretary of the local Union)."

It argued that this provision should be ordered by the Board because of the present existence of dues collection difficulties and because the inclusion of a compulsory check-off provision will create less friction and will prevent involuntary delinquencies.

The company opposed both requests of the union, chiefly on the ground that the numerous stoppages which have occurred at the plant indicate that the union is an irresponsible organization not entitled to any union-security or check-off provision. It pointed out that it has agreed to a voluntary, revocable check-off procedure, which is now in operation at the plant. The company also denied the union's claim that "racial agitation is rampant in the plant," and termed this charge a "vague and nebulous insinuation."

The company listed some 27 work stoppages which had occurred in the period between August 1943 and November 1944. It charged that many of these stoppages had been deliberately provoked or aggravated by officials of the local. It stated that the union had failed to take any effective steps either to prevent the recurrence of such stoppages or to discipline those responsible for them. It cited the fact that the international union was compelled to appoint an administrator over the local as evidence of the local's irresponsibility.

The union pointed out that 12 of the 27 work stoppages cited by the company occurred prior to the certification of the union and prior to the establishment of a temporary bargaining procedure. It stated that 8 of the remaining 15 stoppages resulted entirely from the disciplining and transferring of foremen; that 6 of the remaining 7 were not stoppages in the proper sense of the word; and that in all cases where the union had any knowledge of the stoppages, it cooperated with management to the fullest extent.

The union admitted that in connection with one of the stoppages there was evidence which might cast a doubt upon the union's responsibility. After the hearing before the panel, the union conducted an investigation of this stoppage, the result of which was that the local was placed under the jurisdiction of an administrator appointed by the international union. This action was explained by the union as follows: "Under an administrator, subversive elements outside the union and negligence inside the union can be summarily dealt with."

Both parties submitted a great deal of material relating to the stoppages, including a number of sworn statements by representatives of management and of the union, as well as by workers in the plant. In addition, the company submitted to the panel a copy of the verbatim minutes of an arbitrator's proceeding involving the discharge by the company of three union representatives for their alleged activities in connection with work stoppages at the plant. No attempt will be made to analyze this voluminous material in detail since copies are in the possession of both parties and the complete record is available for examination by the Board.

Discussion and Recommendations

The panel's task of sifting and evaluating the evidence with respect to this issue has not been made easier by the fact that the parties have directly contradicted each other on so many important points. The union has characterized the company's allegations as "intemperate and rash", while the company has termed the union's arguments "vicious" and "phony." Out of the welter of charges and countercharges, however, a few

facts emerge clearly. The others, which remain blurred, must be imperfectly brought into focus by inference and conjecture.

In considering the stoppages cited by the company, the panel believes it proper not to hold the union responsible for those which occurred prior to July 1944. The union was not certified until May 1944, and a temporary grievance procedure was not established until June. With regard to those stoppages which occurred after the establishment of the grievance procedure, the parties are, of course, in sharp disagreement as to who was to blame. The company has charged several officials of the local with the responsibility for originating or continuing the stoppages. The union has, for the most part, denied these charges and has strongly suggested that a number of them were caused by dissatisfied supervisory employees. In this regard, the union offered evidence indicating that an organization of supervisory workers was seeking to gain representation status for the foremen at the Marietta plant.

As indicated above, both parties submitted a great deal of evidence in the form of sworn statements from individuals who were connected in various phases with the work stoppages at the plant. A number of statements submitted by the company were made by union members and workers in the plant. They contained specific accusations against a number of union officials, naming them as primarily responsible for some of the work stoppages. These statements were not impeached by the union. Instead, the union claimed that the statements were obtained by a company representative under false pretenses and that the employees who made these statements would not have done so if they had known how they were to be used. The union also charged that one company official obtained statements from the employees by impersonating a federal officer. These somewhat sensational charges were not supported by substantial evidence and were refuted by the company.

However, by its testimony at the hearing, by the statements in its briefs, and by its conduct subsequent to the hearing, the union has clearly indicated that it believed officials of the local to be implicated to some degree in one or more of the stoppages which occurred at the plant. It is fair to assume, therefore, that some light may be thrown upon the question of the union's responsibilities by reviewing the actions which it took with regard to those individuals whom it believed to be guilty of causing some of the trouble at the plant.

Chief among the union officials accused by the company were H. N. Colvin, chairman of the bargaining committee, C. W. Hickson, chief steward, and H. C. Henderson, steward. Mr. Colvin appeared at the hearing before the panel and assisted in the presentation of the union's case. Subsequent to the hearing, following an investigation by the local, an administrator appointed by the international union was placed over the local by the unanimous vote of its membership. Messrs. Colvin and Hickson were then removed from office. Henderson voluntarily resigned prior to the establishment of the administratorship. After making a further investigation of its own, the company discharged these three officials and took disciplinary action against a number of other employees who had been involved in the work stoppages. The union filed a number of grievances regarding the disciplinary action action taken by the company and took the cases of Colvin, Hickson, and Henderson to arbitration. A three-man board of arbitration upheld the discharges of both Colvin and Hickson and ordered the reinstatement of Henderson with back pay for all time lost, except for one week's penalty. While the arbitration cases were pending, the administration of the union was returned to it, and new officers were elected. Hickson was a candidate for president and narrowly missed being elected. In a run-off election held after Hickson's discharge had been sustained by the board of arbitration, he was defeated by a slim margin.

On the basis of all the evidence submitted, a majority of the panel, labor members dissenting, recommends that the union's request for union security be denied, without prejudice to the right of either party to ask for reconsideration of this issue after a lapse of six months from the date of the Board's directive order.

The panel is unanimous in finding that the union must bear a large share of the responsibilities for a number of the work stoppages which have occurred. The labor members believe that maintenance of membership and check-off should, nevertheless, be granted, with the understanding that these provisions will be withdrawn at the end of the contract period if there

are any more evidences of union irresponsibility. The majority of the panel believes, however, that there is not sufficient indication that the influence of those responsible for much of the former trouble in the plant has been removed. The burden of proof now rests with the union. A six-month period in which to demonstrate its responsibility does not seem to the majority to be too long a trial.

The labor members have set forth their views in a separate opinion.

2. Wages

(a) Rate Ranges and Job Classifications

The union requested the Board to order the establishment in the Marietta plant of the wage schedule presently in effect for production and maintenance workers at the company's Buffalo plant. This schedule was established by order of the Board in October 1943 and provides for the following labor grades and rate ranges:

Labor Grade	Rate
1	$1.40-$1.60
2	1.40- 1.55
3	1.30- 1.45
4	1.20- 1.35
5	1.15- 1.25
6	1.05- 1.15
7	.95- 1.05
8	.90- 1.00
9	.80- .90
10	.80- .85

The union also requested the Board to order the parties to negotiate the slotting of all occupations into ten labor grades.

The company expressed its willingness to convert its present labor grade structure into a schedule providing for ten labor grades on the condition, however, that the average level of occupational rates would not be increased as a result.

Two wage schedules are presently in effect at the Marietta plant. One covers "direct labor," and the other covers "indirect labor." The union represents all workers classified as "direct labor," as well as a substantial number of those classified as "indirect labor." The two wage schedules were approved by the Fourth Regional War Labor Board in the spring of 1943 when the plant was first established. These two schedules provide for the following labor grades and rate ranges:

Direct Labor

Labor Grade	Rate
1	$1.25-$1.45
2	.95- 1.25
3	.75- .95
4	.50- .65
5	.50- .55
6	.85- 1.15
7	1.15- 1.40

Indirect Labor

Labor Grade	Rate
1	$1.20-$1.50
2	.95- 1.15
3	.80- .95
4	.65- .80
5	.55- .65

The "direct labor" schedule covers 339 job classifications, including the various grade breakdowns which are provided for in a number of jobs. Twenty-eight classifications in the "indirect labor" schedule are involved in this case. All of the jobs have been slotted into the various labor grades on the basis of job appraisal rather than by application of a formal point evaluation system. The company has unilaterally evaluated all jobs in the Marietta plant on the basis of the NEMA job evaluation plan, which is in use at the Buffalo plant. On the basis of the evaluation sheets which were submitted to the Wage Stabilization Division, it has been estimated that the institution of the Buffalo wage structure at the Marietta plant would bring about an average increase in job rates (mid-points of rate ranges) of 20.9 cents per hour.

Bracket minima have been established for only 13 jobs, covering 594 employees, comparable to those involved in the instant case. The mid-points of the company's present ranges for these 13 jobs exceed the bracket minima in 7 instances, are below bracket minima in 5 instances, and are equal to the bracket minima in one instance. On the average, the company's present rates exceed the bracket minima by 6.8 cents per hour.

In June 1944, the Regional Board approved a wage schedule for the aircraft division of the Firestone Tire and Rubber Company in Atlanta, which manufactures aircraft parts. The Wage Stabilization Division made a comparison on the basis of job titles between Bell and Firestone rates for 49 classifications, covering about 14,000 employees. On the average, the mid-points of Bell's present rate ranges

exceed the mid-points of Firestone's rate ranges by .6 cents per hour.

Other area wage data were presented by the parties. The union submitted the wage rates paid by the Chevrolet plant of General Motors Corporation in Atlanta, which are generally much higher than the Bell rates, and the company submitted wage rates paid by the Murray Company (ordnance) and by the Georgia Power Company (public utility), the rates of which are generally lower than those paid by Bell.

With the exception of the Bechtel-McCone Corporation in Birmingham, Ala., all major airframe companies in the southeastern area of the United States which are within the jurisdiction of the National Airframe Panel operate under the SCAI wage schedules. The Board has recently approved labor grade rate ranges for the Bechtel-McCone Corporation which approximate those provided by the SCAI schedule. The Wage Stabilization Division has made comparisons based on job descriptions between Bell's present rates and the SCAI rates. These comparisons, covering 17,400 employees in 149 jobs, indicate that on the average the mid-points of the company's present rate ranges are 4.1 cents below the mid-points of the SCAI rate ranges.

Recommendations—With the exception of the common labor and relatively unskilled jobs in Labor Grades 4 and 5 of the "direct labor" schedule, the company's wage structure appears to be substantially in line with the SCAI wage structure. Under any system of job evaluation, however, the jobs in Labor Grades 4 and 5 are badly out of line. The almost universal practice in the airframe industry, which has been recognized time and again by the Board, is to fix the minimum rate for factory common labor (and for related jobs) at a point no lower than the maximum of the trainee rate range. In the instant case, the company has an established rate range for trainees of 65 to 75 cents per hour. If industry practice and Board policy were to be strictly observed, therefore, the minimum rate for the factory common labor would have to be fixed at 75 cents. A majority of the panel believes, however, that the single-rate bracket of 50 cents per hour for common labor which prevails in this area cannot be completely ignored. It is believed that a minimum common labor rate of 75 cents is too high and that a rate range of 65 to 75 cents, the same as that in effect for trainees, constitutes a fair solution of the problem.

The company and the industry members of the panel have argued that the common labor rate proposed by the majority will seriously unstabilize common labor rates in the local area. However, the Board has never permitted the establishment of a minimum classification rate equal to SCAI to be used as a means of raising basic common labor rates in the local area. It has been the policy of the Board to isolate airframe rates in the community and not to permit other companies outside the industry to use such rates as a basis for further wage adjustments in their own plants. Indeed, the National Board has instructed its regional boards not to include airframe rates in wage surveys upon which area brackets are based. The Board has found that this policy has been administered successfully in all areas where SCAI rates, or their equivalents, have been instituted.

The Board has been aware, of course, that the establishment of a minimum classification rate for the airframe industry above the common labor bracket minimum in the particular area has resulted, or tended to result, in shifts of manpower; but this has been regarded as beneficial and in strict accord with the underlying policy of the airframe wage stabilization plan. It was recognized from the start, and planned for, that the airframe industry should have some competitive advantage as to manpower in the community because of the vital value of the industry product and because of the fact that new plants had to be established and old plants enlarged in areas where the minima sound and tested area rates would not be sufficient for the purpose.

It should be strongly emphasized, however, that the consideration upon which the majority recommendation is based in this case is not primarily that discussed in the preceding paragraph. There has been no showing that there is a shortage of manpower in the local area. The majority's recommendation is based primarily upon the finding that the rates presently paid for jobs classified in Labor Grades 4 and 5 are out of line with rates for the other jobs in the plant and constitute a gross intra-plant inequity which should be corrected.

A majority of the panel, industry members dissenting, recommends that

the parties be directed to slot all jobs in the collective bargaining unit into 10 labor grades, ranging from 75 cents to $1.50 per hour. A majority of the panel, industry members dissenting, recommends, further, that employees classified in jobs now slotted in Labor Grades 4 and 5 be hired at the rate of 65 cents per hour and be advanced in increments of 5 cents every 4 weeks to the maximum rate of 75 cents per hour. The panel unanimously recommends that the jobs be slotted in the ten labor grades in such a manner that, with the exception of the increase resulting from the new schedule for common labor and related classifications, there is no resulting increase in the weighted average of job rates.* Finally, a majority of the panel, industry members dissenting, recommends that the parties report back after 30 days from the date of the Board's directive order on the progress of their negotiations.

(b) Trainee Rates

The union requested the establishment of a hiring rate of 65 cents per hour for inexperienced employees, with automatic progression in increments of 5 cents each 30 days up to 80 cents per hour. The union also asked that workers with previous experience be hired at the minima of the rate ranges for their respective classifications.

The company objected to any changes in its present hiring practices.

At the present time, all employees with previous experience and all employees hired for jobs in the lowest two labor grades of the "direct labor" schedule (for which no specific training is required) are hired at the minimum rates of the applicable labor grades. Employees without previous experience who are classified in production jobs are hired at 65 cents per hour and are given "vestibule training" for periods which, according to the company, seldom last more than 30 days and frequently last only 2 weeks. Upon completion of such training, an employee is classified and is paid a rate of 75 cents per hour, the minimum rate for jobs in Labor Grade 3 of the "direct labor" schedule.

Recommendation — The company's present trainee schedule has a higher minimum rate and a faster progression than that which prevails generally in the airframe industry. The almost universal practice is to start trainees at 60 instead of 65 cents per hour. Moreover, the rate of progression at Bell is faster than the prevailing practice in the industry. The only undesirable feature of the company's present plan is that progression time is not regularized.

The panel unanimously recommends the adoption of the following trainee schedule:

"The minimum rate for beginners without previous training or factory experience shall be 60 cents per hour, which rate shall be advanced 5 cents per hour after each interval of 4 weeks' employment until the minimum working rate of 75 cents per hour shall have been attained. Beginners with previous training or factory experience shall, immediately upon hiring, be classified in the job appropriate to their training and experience.

"Any beginner who, within the first 12 weeks of his employment, has not already been assigned to an established job classification, shall be entitled to a review of his qualifications to determine the job classification to which he shall be assigned, and he shall be classified accordingly."

(c) Classification of Employees

The union requested that the Board order the adoption of a provision in the contract providing that, after the completion of not more than 90 days of service, a beginner shall be classified and paid the minimum rate for the labor grade in which his job is slotted.

The company objected to making any changes in its present classification procedure. It stated that the union's proposal would result in a decrease in net take-home earnings for many employees because of the fact that, in most cases, production trainees remain at 65 cents per hour for less than one month and are then classified in Labor Grade 3 at a rate of 75 cents per hour.

Recommendation — The panel is unanimously of the opinion that its recommended trainee schedule adequately covers the union's request with respect to the issue of classification of employees.

(d) Automatic Progression

The union requested that the Board order automatic progression from the minima to the maxima of the labor

* The industry members believe, of course, that there should be no increase in the weighted average of all the job rates.

grade rate ranges in increments of 2.5 cents per hour each 60 days.

The company opposed the union's request, maintaining that its present merit plan represents a fair and equitable method of in-grade advancement.

Under the company's present merit rating plan, employees are rated every three months in accordance with their performance on the job with respect to five factors: (1) quality of work, (2) quantity of work, (3) knowledge of job, (4) initiative, and (5) attitude. The labor grade rate ranges are subdivided into "steps" of 5 cents each. A minimum score of 70 is required to obtain the first merit increase within the range for any labor grade, and a progressively higher score is required for each additional increase. In addition to the regular merit increases given in accordance with this plan, the company also granted special merit increases of 10 or 15 cents per hour to employees whose merit rating scores fall in the upper 7 per cent of any department.

The company did not submit an estimate of the average amount of increase that results annually from the operation of its present merit plan. The distribution of employees within the rate ranges (as of February 1945) is such that the plant-wide weighted average rate is approximately two cents below the weighted average of the mid-points of the job classification rate ranges.

The union's objection to the present merit rating system appeared to be directed mainly at the administration of the plan in actual practice although some dissatisfaction was expressed with respect to the details of the plan itself. At the hearing before the panel, the company stated that, should the panel deem it desirable, the company would be willing to negotiate with the union on the basis of the present merit rating plan.

Recommendation—A majority of the panel, labor members dissenting, recommends that the union's request for automatic progression be denied. A majority of the panel, industry members dissenting, recommends the adoption of the following provision:

"The union shall have the right to negotiate with the company appropriate standards to be followed in making merit increases within the rate ranges. Once the merit plan has been established, the company shall be permitted to apply the standards of the merit plan. Any complaints as to the company's action may be filed through the contract grievance procedure. Following a review, each employee and the union shall be notified whether or not he has received a merit increase and the reasons therefor."

A majority of the panel, labor members dissenting, recommends that any new merit increase plan agreed to by the parties, or, in the case of their failure to agree, any new plan ordered by the Board, shall not operate to permit the granting of more merit increases than those permissible under the existing merit plan, or under General Order No. 31, whichever is the greater.

The union's request for automatic progression is inconsistent with the Board's announced policy on this subject and cannot be approved. The union's dissatisfaction with the existing merit increase plan can, in the opinion of the majority, best be handled under the procedure outlined above. A similar procedure has been recommended by the panel and ordered by the Board in a number of recent cases involving the same issue. While no attempt is made here to pass judgment upon the company's existing merit rating plan, the majority does wish to provide the union with the opportunity of bargaining with the company over possible changes and improvements. Since it is obvious, however, that the existing merit plan is an exceedingly liberal one, a majority of the panel thought it best to impose the limitation outlined above on the number of increases allowable under any new plan.

The dissenting members of the panel have set forth their views in separate opinions.

(e) Due Date of Automatic Increases

The union requested the inclusion in the collective bargaining agreement of the following provision:

"All automatic increases that became due on Monday, Tuesday, or Wednesday of a given week shall be effective as of Monday of that week, and all such increases that become due on Thursday, Friday, Saturday, or Sunday of a given week shall become effective as of Monday of the following week."

However, in view of the fact that the panel has recommended denial of the union's request for automatic progression, this issue has been rendered moot.

(f) Rates in Excess of Maxima

The union requested that the Board's order include a provision that no employee's rate shall be reduced as a result of any wage adjustments which may be ordered. The company objected to this request, maintaining that such a provision would result in gross rate inequities among the employees doing the same work.

The panel unanimously recommends adoption of the following provision:

"If the rate for any job is reduced as a result of this directive order, employees classified in such job shall not have their rates reduced as long as they are employed within the job classification."

(g) Classification of New Jobs

The union requested that the following provision be included in the collective bargaining agreement:

"Within 30 days after the introduction of an occupation which has not been classified, the Company and the Union shall classify such occupation, and the classified rate shall be applied retroactively to date of employment in or transfer to such occupation."

The company offered the following counterproposal:

"Any new job hereafter to be created shall be classified, evaluated, and assigned to the appropriate labor grade through the procedure of collective bargaining and in proper relation to the jobs already assigned.

"The following procedure shall be followed when a new job is introduced. The Company will advise the Union of the new classification and shall provide the Union with a job description and evaluation of the new job and shall assign the job into the appropriate labor grade on a temporary basis. Within 30 calendar days after a production employee has been placed on the new job, the union committee and the Company shall, through the procedure of collective bargaining, assign the job to the appropriate labor grade as outlined above. In case of a dispute, the matter shall be treated as a grievance and handled as such under the grievance machinery of the contract. When the job is assigned to its appropriate labor grade, whether such assignment be made by negotiation or through the grievance procedure, such classification and its rate shall then become part of the wage agreement, and the labor grade so designated, if higher than the temporary labor grade, shall be applied retroactively to the date the production employees started on the job except that retroactive payment shall in no event exceed 60 calendar days."

Recommendation — The only real point of difference between the parties involves the company's insistence that retroactive pay based upon revised rates for new jobs shall in no event exceed 60 calendar days. Such a limitation appears to be inconsistent with the procedure which the company itself has proposed. The panel unanimously recommends the adoption of the following provisions:

"Any new job hereafter to be created shall be classified, evaluated, and assigned to the appropriate labor grade through the procedure of collective bargaining and in proper relation to the jobs already assigned.

"The following procedure shall be followed when a new job is introduced. The Company shall advise the Union of the new classification and shall provide the Union with a job description and evaluation of the new job and shall assign the job into a labor grade on a temporary basis. Within 30 calendar days after a production employee has been placed on the new job, the union committee and the Company shall, through the procedure of collective bargaining, assign the job to the appropriate labor grade as outlined above. In case of a dispute the matter shall be treated as a grievance and handled as such under the grievance machinery of the contract. When the job is assigned to its appropriate labor grade, whether such assignment be made by negotiation or through the grievance procedure, such classification and its rate shall then become part of the wage agreement and the labor grade so designated, if higher than the temporary labor grade, shall be applied retroactively to the date the production employee started on the job."

(h) Overlapping Classifications

The union requested the inclusion in the collective bargaining agreement of the following provision:

"In the event that the normal work assignment of an employee overlaps two or more classified occupations, the rate of such employee shall be that of the highest classification on which he works."

The company objected to this provision but offered the following in its place.

"When it can be shown that the work assignment of an employee overlaps two or more classified occupations, such an employee's classification may become the subject of a grievance."

Recommendation — A majority of the panel, labor members dissenting, recommends that the union's request be denied. The majority believes that the rate to be paid an employee whose work overlaps two or more classified occupations must be fixed according to the facts of each particular case. The provision proposed by the company permits the employee to file a grievance, which seems sufficient protection. The panel unanimously recommends the adoption of the provision requested by the company.

(i) Rates for Leadmen

The union requested that leadmen be paid a rate ten cents above the rate of the highest paid employee under their supervision.

The company stated that it has no classification of leadmen in the plant at present and that it does not contemplate establishing such a classification.

Recommendation — A majority of the panel, labor members dissenting, recommends that the union's request be denied. The majority's recommendation is made with the understanding that there is no leadmen's classification in the plant.

(j) Transfers

The union requested the inclusion in the collective bargaining agreement of the following provision:

"A. If an employee is transferred from one occupation to another (except in case of reduction of force), he will receive the following rates of pay:

"1. If an employee's rate at the time of the transfer is lower than the minimum rate for the occupation to which he is transferred, he will be increased to the minimum rate and his rate of progression thereafter, starting from the date of the transfer, shall be in accordance with Sec. 4 (providing for automatic progression through the rate ranges).

"2. If the employee's rate at the time of transfer is more than the minimum rate for the occupation to which he is transferred, he will be transferred without any change in rate and his rate of progression thereafter shall be in accordance with Sec. 4 except that the time for his next increase shall be figured from the date of his last increase; provided, however, that if the transfer is made at the request of the employee and his rate at the time of transfer is more than the top rate for the occupation to which he is being transferred, he shall thereafter be paid the top rate for his new occupation.

"3. No rate of pay shall be decreased as the result of a transfer at the request of the employer.

"B. If, as a result of a reduction of force, an employee is transferred to an occupation of lower grade, he will be transferred at his current rate of pay and his rate of progression thereafter, starting from the date of transfer, shall be in accordance with Sec. 4 and the time for his next increase shall be figured from the date of his last increase except that if his rate at the time of transfer is greater than the top rate for his new occupation, he will receive such top rate."

The company opposed the union's request but offered the following provision as a counterproposal:

"If an employee is transferred from one classification to another in which he is skilled (except in reduction of forces), he will receive the following rates:

"(a) When an employee is transferred from one job classification to another which requires a higher and different type of skill and pays a higher minimum rate than the job he previously held, the transferred employee may be required to undergo a trial period of not more than 30 days before he is reclassified and paid the minimum rate for his new classification.

"(b) If the employee's rate at the time of transfer is more than the minimum rate and less than the maximum rate for the classification to which he is transferred, he will be transferred without any reduction in rate.

"(c) If an employee is transferred into a classification for which the maximum rate is less than the rate he has been receiving, he shall be paid the maximum rate for the new classification to which he is transferred."

Recommendation—This issue is becoming increasingly common in disputes between management and labor, particularly in the airframe industry. Perhaps the greatest barrier between mutual understanding and agreement on the question is that the parties usually cannot agree on the definition of the problem. This failure is caused primarily by the fact that the custom-

ary terminology is inaccurate and misleading. In most instances, as in the present case, the parties are really in disagreement over promotions, demotions, and effective dates of rate changes. The word "transfer" may or may not cover promotions or demotions. An employee may be transferred physically from one job to another without any resulting change in pay status. On the other hand, an employee may be promoted to a higher classification (e.g., from Lathe Operator "B" to Lathe Operator "A") without being transferred in the physical sense.

The panel believes that much of the disagreement between the parties on this issue will be dissipated by the use of proper terminology. It unanimously recommends adoption of the following provision:

"Change of Status

"1. An employee who is assigned to a job classification which calls for a higher rate of pay shall receive at least the minimum rate of pay for the classification to which he is assigned for the full period of his assignment.

"2. An employee may be permanently assigned to a job classification which carries a lower rate of pay only if he is unable to meet the requirements of his present job or in case sufficient work is not available in his present classification or in the event that he requests reassignment to an available vacancy provided that such assignment is not inconsistent with the contractual rights of another employee."

It will be noted that the panel has substituted the words "change of status" for "transfer." The panel has also recommended that employees assigned to job classifications calling for higher rates of pay shall receive at least the minima rates of pay for the classifications to which they are assigned for the full period of the assignments. On the other hand, the panel has not recommended the imposition of any limitations upon the right of the company to work employees temporarily out of their regular job classifications.

The industry members of the panel have proposed a modification in the language of Par. 1 of the recommended provision. Their views are set forth in a separate opinion.

(k) Retroactivity

The union requested that any wage adjustments ordered by the Board be made retroactive to May 4, 1944, the date the union was certified by the National Labor Relations Board as the collective bargaining agent.

The company objected to any retroactivity.

Recommendation — In accordance with the standard policy of the Board, a majority of the panel, industry members dissenting, recommends that all wage adjustments resulting from the Board's directive order in this case be made retroactive to Sept. 6, 1944, the date this case was certified to the National War Labor Board.

Signed by Benjamin Aaron, public member; Andrew Leiper and Garry Cotton, labor members, subject to dissent with opinion on Issues 1, 2(d), 2(h), and 2(i); and R. Randall Irwin and Paul S. Chalfant, employer members, subject to dissent with opinion on Issues 2(a) and 2(k).

Dissenting Opinion of Employer Members

Industry members concur in the report and recommendations prepared by the chairman on behalf of the panel except in particulars set forth below.

BACKGROUND

Operation of the Georgia division of the Bell Aircraft Corporation antedates the certification on May 3, 1944, of Local 10, UAW (CIO), as bargaining agent for production and maintenance workers. Its earlier history is important to the Board's consideration of this case.

This modern plant was built for the manufacture of B-29 bombers for the United States Government. It is one of four major facilities building superfortresses. It was located in a Group IV manpower area, so classified as late as November 1944 by the War Manpower Commission, because of the existence of a substantial labor surplus. In fact, other B-29 manufacturers have recruited continuously in this area.

The wage schedules for this plant were approved on Feb. 23, 1943. The certification, signed by M. T. Van Hecke, then Acting Regional Director, gives approval under General Order No. 6 (b) [20 War Lab. Rep. No. 2, p. XII; WCDS 122] and interpretation No. 1 thereof, "on the basis of reports by the Bureau of Labor Statistics, the Employment Service, the Civil Service Commission * * * and our

advisory council." Minutes of the advisory council will be reported in greater detail in our discussion of certain wage issues.

The United States Government planted a major industrial operation in the agricultural state of Georgia in close proximity to its largest city. In our opinion, the issues in this case must be weighed and decisions made with the objective of making the greatest possible contribution to winning the second half of the war without leaving to Georgia serious handicaps to its postwar industrial development. In short, unless "rare and unusual" criteria of 1943 are here and now present in this case, it should be judged only by 1945 criteria.

1. UNION SECURITY

Industry members concur in the recommendation to deny maintenance of membership. The company has already granted a voluntary check-off.

Six months' probation might have been a sufficient period of time to test the responsibility of the union had the installation of the new president of the local, who was successful in defeating the former chief steward, been immediately accomplished. Industry members are advised that the local's affairs have again been placed in the hands of an international union administrator, indicating that the local organization is still in a state of confusion.

Recommendation

For these reasons, the recommendation of industry members is that the local be barred from raising the question of maintenance of membership for not less than one full year from the date of the order of the Board.

2. WAGES

(a) Rate Ranges and Job Classifications

Members of the Atlanta advisory council met on Feb. 18, 1943, for final consideration of the rates proposed by Bell Aircraft Corporation. Mr. Preston Arkwright, industry member, stated that he believed proposed rates for unskilled workers were 50 per cent higher than prevailing rates; semi-skilled rates somewhat higher; skilled rates were "high," but he could see no objection to them.

Mr. R. H. Brazzel, labor member, stated that he believed the rates "not out of line with what is ordinarily considered prevailing rates in Atlanta." Mr. Albert W. Gossett, labor member, said the lower group rates proposed were "higher than prevailing here for common labor." As to common labor rates, AFL showed 40-45 cents for foundries and 50-60 cents for construction.

U. S. Employment Service reported a common labor rate of 40-55 cents for smaller companies and 50-65 cents for larger companies. Bureau of Labor Statistics submitted 45-45 cents and 50 cents for smaller and larger concerns, respectively.

Bell proposed 50-65 cents for common labor. Mr. Marion Smith, public member, thought the maximum too high. Out of the foregoing considerations there came a common labor rate of 50-56 cents; a range of 50-65 cents for helpers and other unskilled classifications higher than labor, training for semi-skilled and skilled occupations was allotted a rate of 65-75 cents.

Starting from scratch, Bell has recruited and trained the largest number of airframe employees working in any one plant in the South, seventh largest in the United States in December 1944; it is producing on schedule, and hundreds of its trained employees have been released through USES to plants in other parts of the United States.

The proper airframe rates in Georgia are the Bell rates.

The majority compares Bell and Firestone rates. This is immaterial because Firestone rates were fixed at Bell levels in June 1944.

Comparison is made with SCAI rates, particularly at the Bechtel-McCone Corporation, Birmingham, Ala. Bechtel-McCone did not want or need SCAI rates. Bell does not want SCAI rates or job descriptions. The Board may learn before this report reaches it that the imposition of SCAI rates at Bechtel-McCone resulted in an increased cost in excess of 5 cents an hour. The Wage Stabilization Division estimates that the average mid-points of Bell's present rates are 4.1 cents below SCAI mid-points. We will show below that this comparison is of doubtful accuracy.

Recommendations

Under this heading the majority says, "Under any system of job evaluation the jobs in Labor Grades 4 and 5 are badly out of line." Out of line with what? We have shown conclusively that the rates set by the Atlanta Regional Board are the "line"

for that labor market area. Possibly the "line" has been kinked by the award of a 55-cent minimum in a small number of textile mills or by a rate for heavy labor in basic steel (none in Atlanta area) of 60½ cents.

Industry members proposed to the panel, and are again willing to recommend to the Board, that Labor Grade 5 (50-65 cents) be eliminated in favor of a rate range of 55-65 cents for the lowest classified labor grade. This was rejected by the majority.

Two very significant features of the Bell rate structure have been ignored in the majority recommendation. (1) Semi-skilled and skilled factory jobs are divided into broad "A" and "B" classifications. There are no "C" grades. (2) Training for the jobs in Labor Grade 3 (75-95 cents) is paid 65-75 cents. There are no classified jobs in the 65-75 cent rate range. To all intents and purposes it takes the place of minimum "C" classifications, which are much despised by the unions. This difference in basic job ranking and width of Bell rate ranges, we believe, accounts primarily for the alleged differential between Bell and SCAI mid-points. They are not accurately comparable by job content.

The majority attempts to make a case for a 50 per cent increase in the rate for unskilled labor in this plant where, it is admitted, labor is plentiful at prevailing rates. Because a substantial part of the industry happens to be located in areas where the common labor rate is the same as the top of the training rate, it is argued that this relationship has become Board policy.

Then it is claimed that the Board has never permitted SCAI rates to be used as a means of raising basic common labor rates in a local area. Undoubtedly that has been the intent of the Board. But before the ink was dry on the majority report in this case, we understand the Atlanta Regional Board upped the Firestone hiring rate to 65 cents because the Board had learned that 65 cents was to be the recommended minimum rate in this case. Pressure of this panel action are already being felt.

There is included in the majority report a dissertation on the now historic advantage accorded to airframe companies ordered to locate in unindustrialized areas when production schedules were on the way up to 100,000 planes a year. But that is not the reason for the majority's recommendation. It just says that could be a reason if necessary.

Then the majority returns to the theory of the laborer-trainee comparison and concludes that there is "a gross intra-plant inequity which should be corrected." We deny that intra-plant inequities can be invoked in the circumstances in this case unless it had been demonstrated that jobs are improperly slotted in the labor grades ordered by the Regional Board. For example, there is no stabilization rule that the labor rate shall be exactly one-half the tool and die rate. Rather, minimum and maximum anchor points are fixed by the Board on the basis of area or industry practice, and jobs are ranked between those terminals. Thus, if the Board set the labor rate at 50 cents and tool and die at $2.50, this panel would have no authority or right to recommend that labor should go to $1.25 just because the labor rate in SCAI or any plan other than that of Bell at Marietta happens to have a maximum which is exactly double the minimum rate.

The truth seems to be that the majority would correct what it believes to be an entirely too low common labor rate in the Atlanta area where Bell must compete with labor rates on the surrounding farms. But because "the common labor rate which prevails in this area cannot be completely ignored," recommendation is made that it not be completely ignored until after 60 days. Automatic progression from 65 to 75 cents is recommended. This must of necessity introduce a common labor rate of 75 cents in this area. Industry members dissent.

In this connection, industry members invite attention to a divided panel recommendation on setting the rate structure for the Burlington, Vt., plant of the Bell Corporation. An industry-labor majority was impressed by the representations of the company that wage relief was needed to hold essential manpower. The wage structure as set by the Regional Board provided for seven labor grades with a minimum of 50 cents and maximum of $1.35. The company proposed ten labor grades with a minimum of 60 cents and maximum of $1.40. The panel chairman, in his dissenting opinion, was firm in his support of the rate structure as established by the Regional Board. He quoted the unanimous opinion of the Regional Board that no further increases could

be approved unless the National Board determined "that the circumstances exist which could justify classifying this case as rare and unusual." He relied upon the precedent enunciated in the North American Aviation (Waco, Texas) Case No. 8-8102 [15 War Lab. Rep. 322] decided Apr. 15, 1944, and quoted from the opinion of Public Member Gill, speaking for the majority of the Board, in which it was stated in part as follows:

"When the proposed increases reach the point where they are no longer needed for manpower purposes and where they would result in seriously and unnecessarily unstabilizing the wages in the labor market area, we think they must be denied under the wage stabilization program."

A majority of the National Board, labor dissenting, reversed the industry-labor majority, sustained the panel chairman, and held the Burlington rates at a minimum of 50 cents and maximum of $1.35.

The panel labor members' votes are consistent in the present case, but perhaps for different reasons.

Industry members, however, believe the actions of the Board in the Burlington and Waco cases to be applicable in deciding the wage issue now present in the Marietta, Ga., plant of the Bell Company.

Ten Labor Grades—Despite the fact no intra-plant inequities have been proved to exist, the majority recommends that the Board direct the parties to slot all jobs into ten labor grades. There seems always to be hope that tampering and tinkering with a perfectly sound and reasonable rate structure will accomplish something beneficial, whereas it usually results in turmoil and false hopes for the employees. The same company and the same union attempted the same job in Burlington without success. That experiment had not been completed when the company made no serious objection to trying it at Marietta. Because it failed at Burlington, industry members oppose it in this case.

Industry members agree that, if jobs are reslotted into ten labor grades, it must be done with no increases in the weighted averages of job rates. Of course we did not agree to except the proposed increases in the common labor rates from this restriction on increased costs to the Government. If the Board in its wisdom believes better B-29s can be built with jobs slotted into ten labor grades and agrees that the wage level should not be increased then its order should cover ten labor grades and let the chips fall where they may.

(d) Automatic Progression

Once again a public-labor majority has introduced new issues after a public-industry majority has disposed of the only issue presented by recommending denial of automatic ingrade wage progression.

The panel majority recommends that the union be given the right to negotiate merit rating standards, industry dissenting.

The union is to be notified of the reasons for granting or withholding merit increases, industry dissenting.

Says the majority of the latter two proposals, "A similar procedure has been recommended by the panel and ordered by the Board in a number of recent cases involving the same issue." Industry members believe it is about time the panel took a good look at results in North American, Douglas, Bell (Buffalo), et al., to say nothing of Maxson.

It is stated in the majority report that no attempt was made to pass judgment on the company's existing merit plan. Of course the panel made no attempt to revise it. But the record makes it appear that it would not be approvable if it were an automatic progression plan. In the last six months of 1944, the company conducted 33,525 wage reviews and granted 27,904 increases of 5 cents or more. Of the 5,621 who did not receive increases, 4,173 were at the top of their labor grades. Only 1,448 failed to qualify.

The union charged that the number of wage grievances were "staggering and astronomical." The company admitted to having had 131 such grievances in the same six-month period in which it granted 27,904 merit increases and left it to the Board as to just how "staggering and astronomical," that percentage is.

Industry's motion that the wage increases allowable under any negotiated plan should not exceed the practice under the present plan gained the support of the public member.

(j) Transfers

A unanimous panel has sought to atone for past sins by cleaning up the language on a highly controversial issue. Industry members believe the company should have the right to change the status of any employee in

the interest of efficient production so long as rights of the employee under seniority and the grievance procedure are not violated.

The word "transfer" is abandoned because it does not mean the same thing or things to any two managements or unions.

Industry members believe it would be well to change the words "full period" in Par. 1 to read "each full day" lest a 15-minute relief on a higher rated job might prompt a demand for compensation for that "full period." If the first paragraph prevents tryouts for higher rated jobs, it is because labor members of the panel were willing to trade that opportunity for employees in order to eliminate an alleged but unproved abuse of the job classification system. We hope strict enforcement of this proposed order will not impede production.

(k) Retroactivity

If industry's position on the wage structure prevails, there will be an increase of only five cents in the minimum of the common labor rate which might be made retroactive under the policy of the majority of the Board. We urge that any retroactivity be limited to employees who have remained on the payroll while this case has been before the Board. Industry members oppose any retroactivity.

Industry members have urged upon the panel that this report and recommendations be submitted to the Atlanta Regional Board with a request for a recommendation on the major wage issue in dispute.

Signed by Paul S. Chalfant and R. Randall Irwin, employer members.

Dissenting Opinion of Labor Members

UNION SECURITY AND CHECK-OFF

The majority recommendation clearly places the full responsibility on the union for all work stoppages and imposes a penalty which we feel is not justified. This plant is located in a part of the country where labor unions were not made very welcome until just recently, and we understand racial discrimination is still being practiced to a great extent. In plants where unions have been established for a considerable period of time, the number of work stoppages listed by the company would undoubtly look bad. However, 12 of those stoppages occurred prior to the certification of the union and prior to the establishment of a temporary bargaining procedure, which proves that even when the company was not hindered or handcuffed (as management sometimes refers to collective bargaining), they were unable to prevent work stoppages.

Industry has always maintained that, if they were permitted without protest by unions to discipline employees involved in work stoppage, production would continue without interruption. In this instance, however, such is not the case because in the 12 stoppages referred to above, the company had the green light to use any disciplinary measures they desired. We must assume that the company was not guiltless in regard to its responsibility for work stoppages in that a foreman was discharged for participating in one or more interruptions. The union did cooperate with management to the fullest extent to prevent work stoppages and did not protest the discharge of some employees, while on the other hand a large percentage of the employees whom the company claimed were involved were reinstated after investigations were made by both parties. As to the union officials accused by the company of instigating the work stoppages the union by its action in defending these three people did not imply that it condoned their actions if they were found guilty. We were always of the opinion that in the United States a person accused of a crime is innocent until proved guilty by process of law, and in this instance, as stated in the majority report, one of the three, namely Henderson was reinstated with back pay by a board of arbitration.

No work stoppages have occurred since November 1944, a period of six months. So it must follow that the union has assumed its responsibility in the prevention of interruptions of production. It must likewise be assumed that during the period in which the stoppages occurred, the union must have been cooperating with management because at no time did a general strike result from any of the 15 stoppages.

As we stated in our opening remarks, the majority recommendation is an unfair penalty imposed on the

union. The Board in numerous cases has reversed the procedure as recommended by the majority. These are only a few of such cases.

1. Acme Laboratory Equipment Company
2. Solar Sturges [10 War Lab. Rep. 247]
3. Hummer Mfg. Company [11 War Lab. Rep. 53]
4. Yellow Truck and Coach [5 War Lab. Rep 244]
5. Lamson and Sessions [8 War Lab. Rep. 295]
6. Semet Solvay [7 War Lab. Rep. 123]
7. Federal Bearing and Schaatz [9 War Lab. Rep. 691]
8. General Tire and Rubber Company [10 War Lab. Rep. 177]

We therefore recommend that the Board order the standard maintenance-of-membership and check-off clause in this case and further that the Board shall have the right to withdraw such a clause at the expiration of the agreement if the union fails to maintain and assert its responsibility.

Signed by Andrew Leiper and Garry Cotton, labor members.

WASHINGTON GARAGE CO., INC.—

Decision of National Board

In re WASHINGTON GARAGE COMPANY, INCORPORATED [Washington, D. C.] *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, LOCAL 736 (AFL). Case No. 111-12613-D, July 20, 1945 (made public Aug. 24, 1945).

ARBITRATION—Second arbitration of grievance

Grievance over allegedly discriminatory discharge of employees should be submitted to single arbitrator for decision where original decision by tripartite board was ambiguous and interpretation of two original members, one of whom had dissented to award, led to new dispute. Decision should not be construed as relaxation of hands-off policy in nonwage arbitration proceedings but as providing solution fair to both parties and free from technicalities under peculiar facts of case.

For other rulings see Index-Digest 10.468 and 10.101 in this or other volumes.

Unanimous decision of Board affirming decision of Regional Board III (Philadelphia). Opinion by Jesse Freidin. Public member concurring: Edwin E. Witte. Employer members concurring: Clair S. Cullenbine and Lee H. Hill. Labor members concurring: David R. Stewart and John Leonard.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, Directives, and Regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted the petition filed in the above entitled case for review of the Third Regional War Labor Board's directive order of May 3, 1945, in the above entitled case, hereby takes the following action:

I. The original issue in dispute, excluding any question of back pay, shall be submitted to an arbitrator to be appointed by the chairman of the Board.

Opinion of the Board

July 24, 1945

FREIDIN, Public Member:—We have vacated the Regional Board's order which directed the parties to submit to a new board of arbitrators a dispute regarding the meaning of the award of an original board of arbitrators to which the parties had submitted an unsettled grievance over the discharge of two employees. Our order provides instead for arbitration, de novo, of the original grievance, excluding, however, any question of back pay.

In the unanimous judgment of the Board this is the most equitable and practical disposition of the dispute now before us. The unusual circumstances of the case, the procedural convolutions through which it has already passed, and the challenged status of an interpretation made by the public and industry members of the first arbitration board (the industry member dissented from that portion of the original award the meaning of which is now in dispute; the

labor member, for reasons set out in the Regional Board's opinion, declined to participate in the proceedings which resulted in the interpretation) all combine to persuade us that the question should be determined anew. For both parties are entitled to be fairly convinced that the grievance has been finally resolved on its merits and not on the basis of some procedural nicety or technicality. We do not believe this result could have been achieved, under the peculiar facts of this case, either by relying on the challenged interpretation of the majority of the first board of arbitrators or by referring to a second board of arbitrators the question of what the original board intended. Under the best of circumstances this latter procedure is a highly doubtful one.

We have eliminated from the consideration of the arbitrator to be designated under our order any question of back pay should it finally be determined that the discharges were improper. For on this question there can be no dispute as to the intention of the original award. Even were the union's view of that award to be accepted at face value these two employees would not, upon reinstatement, have been entitled to any back pay. There is no reason, therefore, in fairness to the company, why this question should be relitigated.

Our action in this case is not to be construed as a relaxation of our established policy of refusing to interfere with or to review the merits of an arbitration award on a nonwage issue. The limited arbitration we have ordered is, in our unanimous opinion, warranted only by the web of unique circumstances, mainly of a procedural character, in which the original award has become entangled. The substantive issues of the case have thereby been obscured and the acceptability of the award jeopardized. We think it our duty, in such a situation, to provide for a procedure which will result in a final decision on the merits of the grievance.

Modified Directive Order of Regional Board III (Philadelphia)

May 3, 1945

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, having considered the union's petition for review of the directive order dated Jan. 19, 1945, and the company's answer thereto, and having conducted an oral hearing of the parties on Apr. 5, 1945, hereby vacates the directive order of Jan. 19, 1945, and orders that the following terms and conditions shall govern the relations of the parties:

I. In the matter of the discharge grievance here involved and the interpretation of an arbitration award made in connection with that grievance, the parties shall select a new arbitration board in accordance with the terms of their contract, which arbitration board shall make a final and binding determination of the meaning of the award of the previous arbitration board. It is recommended that the parties select as chairman of the board of arbitration a person who is experienced in arbitration proceedings in this industry. The parties shall request the arbitration board to indicate clearly any portion or portions of its award which are to be binding on the parties and that portion or portions which may constitute merely an advisory recommendation.

II. This modified order shall stand confirmed as the order of the National War Labor Board unless, within 7 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review, unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Signed by William Loucks and Frank C. Pierson, public members, with opinion; Sylvester Calabro and Joseph Heuter, labor members; and Francis A. Davis, employer member. Mr. Nixon, employer member, dissented with opinion.

Directive Order of Regional Board III (Philadelphia)

Jan. 19, 1945

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the

powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942 and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. The three members of the tripartite arbitration board, which originally arbitrated the discharge grievance here involved, shall reconvene, and by majority vote agree on a clear and unequivocal statement of the wording of the decision. Their decision shall then be final and binding on both parties.

II. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Signed by William N. Loucks and T. Guthrie Speers, public members; Gervase N. Love and Leon Schachter, labor members; and John E. Means and Harold Butler, employer members.

Opinion of the Board

May 3, 1945

ARBITRATION AWARD

LOUCKS and PIERSON, Public Members:—The Regional Board, by a five to one vote, has vacated its directive order of Jan. 19, 1945, and has ordered the parties to establish a new arbitration board to finally determine the meaning of the arbitration award handed down on Nov. 13, 1944. The following chronology of the case best presents the background needed to understand our most recent action:

History

May 25, 1944—All members of the union went on strike.

May 31, 1944—The National War Labor Board by telegram ordered the employees back to work, providing among other things in its order that the "company take back all persons desiring to return to work in compliance with the Board's orders without discrimination because of their participation in the strike."

June 2, 1944—All employees returned to work.

June 8, 1944—The company discharged two of the employees who had participated in the work stoppage—Riedar Haug, vice-president of the local, and Frank Binder, a union steward.

June 16, 1944—In accordance with the contract between the parties, a hearing was held by company and union officials on a grievance brought by the union on these discharges. No satisfactory settlement was arrived at. The issue was stated by Mr. Dorsey, a union official, as follows: "The union contends that this man was discharged solely because of the position he holds in the union; that his discharge was unjust; and that we will prove these facts by the first five or ten witnesses we call." (The issue was stated in the singular because the cases of Haug and Binder were taken up separately. However, the issue is the same in both cases.

Sept. 27, 1944—The grievance having gone to arbitration in accordance with the contract, a board of arbitration was convened and a hearing held in Washington, D. C. The three man board of arbitration consisted of Clark K. Dorsey, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America; William S. Huber, on behalf of the Pennsylvania Greyhound Lines; and William J. Neale, Esq., impartial chairman. The parties agree that the question presented to the arbitration board is correctly phrased above.

Nov. 13, 1944—The board of arbitration handed down an award written by Mr. Neale and agreed to by the labor member of the board, Mr. Dorsey. (A photostatic copy of the award shows the signatures of Mr. Neale and Mr. Dorsey). This award, after four pages of analysis of the case, reads as follows:

"Decision

"I cannot help but feel, therefore, that the company was justified in the interest of maintaining discipline over their employees in firing these two men.

"Recommendation

"I feel, however, that the men have, by this time, learned their lesson and that they should be taken back and given another chance. I don't feel, however, that the company should be penalized to the extent of taking them back and, in addition thereto, paying back salaries or wages. Therefore, my recommendation is that Messrs. Binder and Haug be restored to their positions without back pay, that their full seniority rights be restored, and the record cleared.

"William J. Neale, Chairman"

This, or whatever part of it was a majority decision under the contract, became binding upon the union and the company.

On or about Dec. 4, 1944—A work stoppage occurred as a result of the company's acceptance of only the "Decision" portion of the arbitration board's award as binding.

Dec. 4, 1944—There was certified to the National War Labor Board a dispute case between this union and this company arising out of the discharges and the award by the board of arbitration. The case was referred to our Regional Board for a procedural hearing in which the parties were to show cause why work should not be continued in accordance with the award of the board of arbitration.

Dec. 6, 1944—The men returned to work on the basis of a promise of a National War Labor Board hearing.

Dec. 14, 1944—The work stoppage having terminated, the Regional Board's New Case Committee ruled that the parties were to appear before a hearing officer on Dec. 28, 1944, to show cause why the arbitration award should not be complied with by the parties.

Dec. 28, 1944—A hearing was held before our hearing officer, each party being represented and presenting argument. The company contended it had complied with the arbitration board's award. The union argued that the company was in noncompliance because it had not effectuated the portion of the award headed "Recommendation." The union requested the Regional Board to sustain the full award and order the company to reinstate the discharged employees.

Jan. 16, 1945—The Regional Board considered the hearing officer's report. He found that the structure and wording of the arbitration board's award left "more than an element of doubt on the interpretation of the award." He excluded from his report all consideration of the merits of the arbitration award holding that "the Board should endeavor to aid the parties to secure clarification of the award." To this end he recommended that the Board order the parties to:

"1. Secure an interpretation of the award from the chairman of the arbitration board in the form of an unqualified decision which is final and binding and leaves no doubts in the minds of either party, within 20 days from the date of the order.

"2. Submit the original arbitration award to another tripartite board of arbitration as outlined in the arbitration provision of their agreement in the event an interpretation cannot be obtained from the chairman of the original arbitration board."

Jan. 19, 1945—The Regional Board issued a directive order as follows: "The three members of the tripartite arbitration board, which originally arbitrated the discharge grievance here involved, shall reconvene, and by majority vote agree on a clear and unequivocal statement of the wording of the *decision*. Their *decision* shall then be final and binding on both parties." (Italics appeared in the directive order.) This directive order was by unanimous vote of the Board.

Feb. 1, 1945—The Regional Board received from Mr. I. B. Padway for the union the following telegram: "In the matter of Washington Garage Company, Inc., it is the intention of Amalgamated AFL, Local 736, to file a petition for review with the National War Labor Board. Because of stress of work, we now ask for five-day extension of time period in which to file. Will you please advise whether our request is granted?"

Feb. 3, 1945—Mr. Joseph N. Smith, the Regional Board's appeals agent, telegraphed Mr. Padway, with a copy of the telegram going to the union, refusing the union's request for an extension of time. The ground for this action was that the union's petition stated no adequate reason for granting an extension.

Feb. 3, 1945—Mr. Padway telephoned Mr. Smith protesting the refusal of the union's request for an extension of time.

Feb. 4, 1945—The union's petition for review was mailed to this Board de-

spite the refusal of its request for an extension.

Feb. 5, 1945—The members having been duly notified, the original board of arbitration assembled, Mr. Neale and Mr. Huber being in attendance. Mr. Dorsey, representing the union, did not attend but sent the following telegram: "I will not attend meeting Monday due to attorney for the union filing brief in regard to directive order of War Labor Board, copy of which you shall receive." Since the time for filing a petition for review had expired, Mr. Neale apparently concluded that the arbitration board was free to proceed in accordance with the terms of the directive order. After noting that the expiration date for filing a petition for review had expired and noting the absence of Mr. Dorsey and the reason therefor, Mr. Neale and Mr. Huber signed a "supplemental opinion", the pertinent portions of which are as follows:

"We feel that the original opinion in this case, as set out under the subheading "Decision," on the bottom of p. 3 of the opinion, is perfectly plain, and that part of said opinion under the heading of recommendation is what it purports to be, merely a recommendation and not a decision of the Board. In other words, we reiterate what the original opinion decided: We again say that the company was justified, in the interests of maintaining discipline over its employees, in dispensing with the services of Messrs. Binder and Haug, and the decision so held.

"This was the sole matter before the Board for decision, and any other parts of the opinion were purely in the nature of a recommendation and form no part of the decision."

Feb. 7, 1945—The Regional Board's Review Committee decided that the requested extension of time should have been granted and that the union's petition for review therefore should be considered timely. This action was based on the fact that Mr. Padway's Feb. 1 telegram was improperly routed after being received in the Board's offices and that to deny the request for extension two days after its receipt foreclosed the opportunity which the union otherwise would have had to file some sort of an appeal document within the prescribed time limit. Mr. Padway was informed of this action by a letter from Mr. Smith, a copy being sent to the company.

Mar. 13, 1945—The Regional Board considered the union's petition and unanimously decided to reconsider its previous action contained in the directive order of Jan. 19, 1945. It was further ordered that an oral hearing be held before the Board.

Apr. 5, 1945—An oral hearing before the Board was held in Baltimore. Mr. Padway, appearing for the union, argued that the Jan. 19, 1945, directive order should be vacated and the entire arbitration award, including the portion marked "Recommendation" as well as that marked "Decision", should be held to be binding on the company. Mr. Quinn, appearing for the company, held that the Jan. 19, 1945, directive order had been compiled with, that it should not be vacated, and that under that directive order the Feb. 5, 1945, interpretation by the original board of arbitration was binding and, finally, that there was no legitimate reason for taking any further action on this case unless it be to affirm the directive order of Jan. 19, 1945.

At the Baltimore hearing on Apr. 5, 1945, Mr. Padway, representing the union, and Mr. Quinn, representing the company, were given ample time and opportunity to present all aspects of their respective positions. The detailed arguments and evidence submitted are not reviewed herein since they can be found in the record.

Discussion

At the close of the hearing the Board, in executive session explored the only three possible actions which appeared to contain any merit or logic. Each of these is summarized below.

(1) From one point of view it was urged that the Board order the parties to disregard entirely the original arbitration proceedings, set up a new board of arbitration and accept the decision of this new arbitration board as final and binding.

The public members are unable to agree with this position since the National Board has followed a perfectly clear cut policy of refusing to interfere with or review arbitrators' awards involving nonwage issues. The arbitration proceedings in question in this case were carried on under the contract. To invalidate or in any way

modify them or their results would be completely out of line with National Board policy. Even though the Regional Board were not acting under such clear-cut guidance from the National Board, we could not accept this proposal since we are fully convinced that the War Labor Board should refrain from tampering with arbitration proceedings carried on under contracts. Indeed, in this case no argument has been made that the arbitration proceedings depart in any manner from contract provisions, nor has any member of the Board of arbitration been challenged as unqualified for his post. The public members hold that this Board should take no action which would modify or invalidate in any way the arbitration award handed down on Nov. 13, 1944.

(2) Another possibility discussed by the Board was to make a finding of fact that the original board of arbitration, by majority vote, intended that the portion of their award entitled "Decision" should be binding upon the parties and the portion entitled "Recommendation" should not be binding. The same effect would have been achieved by a Board decision that the Feb. 5, 1945, meeting of the board of arbitration was completely in accord with our directive order of Jan. 19, 1945, and its action was not invalidated by either the nonattendance of the union member or the pendency of the union petition on the day of its meeting.

The public members are unable to accept this determination of the issue for a variety of reasons. In view of all the facts, we have some doubt as to whether the arbitration board's supplemental award dated Feb. 5, 1945, complies with the word or the spirit of the Board's directive order of Jan. 19. The labor member of the arbitration board did not attend its session on Feb. 5 although a majority was present and in agreement. The absence of the labor member raises a question as to whether the "Supplemental Opinion" accurately represents the intent of the impartial and labor members of the arbitration board who signed the original award. While these circumstances create this doubt, we do not wish to pass on the question of whether it is possible for the impartial and industry members, in the absence of the labor member, to determine what the impartial member and the labor member jointly had in mind when they originally signed the award.

We also have some doubt as to the legality under our directive order of the arbitration board's meeting on Feb. 5. As the chronology indicates, on that date there was pending before the Regional Board the union's petition for review which ultimately was accepted as timely. A combination of circumstances prevented the chairman of the arbitration board from knowing about this petition. Hence he was fully within his rights when he called the arbitration board together. Nevertheless the fact that the petition was pending raises a question as to whether the arbitration board could arrive at a binding "Supplemental Opinion" at a time when the Board's directive order under which it was functioning had not become final.

The doubts described above should be considered in conjunction with one additional fact: The question as to the true meaning and intent of the board of arbitration's original award is not before this Regional Board for determination. It would be beyond the proper scope of our action to find that the parties cannot proceed under the original arbitration board because the company has not fully complied with its terms. Moreover, the Baltimore hearing was not directed to the question of what was the intended meaning of the award of the board of arbitration. Only representatives of the union and the company were ordered to appear at the hearing. Presumably the only parties who now know what was the original intended meaning of the award are either the parties who signed it, that is, the impartial member and the labor member, or all three parties who sat through the original arbitration proceedings. Since the Board has not heard these parties, it is obviously impossible for us to determine now what was the original intended meaning.

(3) A third possibility has been accepted by the public members as the only logical and sound action for the Board to take at this time. We have vacated the directive order of Jan. 19, 1945, thus invalidating automatically the "Supplemental Opinion" of the board of arbitration. This action is based upon a number of facts.

Certain circumstances connected with the case, particularly those relating to correspondence between the company and the impartial chairman of the arbitration board and the union and the impartial chairman, were not fully known to this Board when it

acted on Jan. 19. Since the record of the Baltimore hearing goes into these matters and they are referred to in some detail in a staff memorandum dated Mar. 20, 1944, they are not recited here.

The Jan. 19 directive order of the board clearly was intended to dispel doubt in the minds of the parties as to the original intention of the arbitration board. It is perfectly clear that, in view of the circumstances that have prevailed in this case, our Jan. 19 directive order has completely failed to achieve this purpose. Hence, we make a finding of fact that the reason why the parties have not and cannot satisfactorily proceed with their customary relationships on a day-to-day basis is that at least one of the parties has a sincere and justified doubt as to the real intended meaning of the original arbitration award. It is our opinion that the doubt should be resolved in a manner consistent with the way in which unions and companies in this industry customarily resolve such doubts, that is, by arbitration. Hence, this Board has ordered the parties to enter a new arbiration proceeding to determine what was the true meaning of the original arbitration board's award.

Dissenting Opinion of Employer Member

ARBITRATION AWARD

NIXON, Employer Member:—The majority erred in vacating its directive order of Jan. 19, 1945, and substituting in its stead an order to the parties to submit the question of what the arbitration board meant in its original opinion to a new board of arbitration, such a new Board to be set up in accordance with the same procedure followed in setting up the original board of arbitration.

There is no disagreement between the parties as to the issue presented to the original board of arbitration—the simple issue was clearly a question of whether or not the company was justified in the discharge of two men. There is no question but what the opinion of the board of arbitration clearly answered this question in the affirmative but followed with the recommendation which recommends reemployment of the two men but without back pay but with full seniority rights restored. The fact that the arbitration board went beyond the simple issue presented to them has brought about confusion in the minds of the parties.

In spite of the clear language of the opinion of the arbitrators that the discharge was justified, which is supported further in the recommendation that they be reemployed without back pay, yet the mere presence of the recommendation casts some doubt on the proper interpretation of the clear language of the opinion to the extent that it might be interpreted to mean that some disciplinary action was justified, not necessarily discharge, and that the recommendation is the opinion of the arbitrators as to the proper disciplinary action to have been taken under the circumstances.

Closely coupled with this is the question of whether or not it was intended by the board of arbitration to have both its decision and its recommendation interpreted as an order binding on both parties. This whole matter was before the Board at the time they issued their order of Jan. 19, which properly remanded the interpretation back to the three members of the tripartite arbitration board which originally arbitrated the discharge grievance here involved. Clearly this is the only group who can properly interpret the opinion.

The only objection which can be made and which has been made to this order is that the arbitration board was not qualified to do the work set before it. This effort to get behind decisions of arbitration boards strikes at the very essence of arbitration. Once arbitration is decided upon, it must be recognized that this decision has been motivated primarily for the purpose of getting an issue settled. After the arbitrators have been carefully selected and the issue properly before them, the matter then rests with the arbitration board, and its decision should be final. True, its decision should be definite, and, if there is any uncertainty with respect to what their findings were, the parties should have a right to have the finding clarified, but clarification can only come from those who have made the finding. Our directive order of Jan. 19 properly recognized this principle. This directive order should have stood as the final decision of this Board.

At this late date, to now set up a new board of arbitration for the sole purpose of determining what was meant by the language of the opinion rendered by the original board of arbitration is nothing more than a di-

rect attack on the ability of the original arbitrators to make a proper finding, and I repeat that this sort of procedure is an attack upon the very fundamentals of arbitration.

LACLEDE STEEL CO.—

Decision of National Board

In re LACLEDE STEEL COMPANY [St. Louis, Mo.] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 1785 (CIO). Case No. 111-5602-D, June 23, 1945 (made public Aug. 23, 1945).

Remanding 23 War Lab. Rep. 595.

PROCEEDINGS BEFORE BOARD—Fair hearing

Regional Board's order eliminating beginners' and learners' rates is remanded with instruction that hearing be held on merits of issue. Company contends that it was never given opporunity to be heard on merits.

For other rulings see Index-Digest 143.300 and 300.250 in this or other volumes.

Majority decision of Board remanding decision of Regional Board VII (Kansas City). Public members concurring: George W. Taylor, Lewis Gill, Jesse Freidin, and Lloyd E. Garrison. Employer members concurring: Charles Roberts, Walter Knauss, J. Holmes Davis, and Clarence O. Skinner. Labor members dissenting: Van A. Bittner, Delmond Garst, Elmer M. Walker, and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of the Seventh Regional War Labor Board's corrected directive order dated Mar. 13, 1945 [23 War Lab. Rep. 595], hereby takes the following action:*

I. The case is hereby remanded to the Seventh Regional War Labor Board. The parties shall be afforded a hearing before the Regional Board on the issue of elimination of beginners' and learners' rates.

FOUR NEW YORK HOSPITALS—

Decision of National Board

In re BETH ISRAEAL, BETH MOSES, BETH EL, and ISRAEL ZION HOSPITALS *and* STATE, COUNTY AND MUNICIPAL WORKERS OF AMERICA, LOCAL 444 (CIO). Case No. 111-2827-D, July 27, 1945 (made public Aug. 21, 1945).

JURISDICTION OF BOARD—Nonprofit organizations

Board rejects contention that it should dismiss dispute between group of nonprofit hospitals and union as dispute outside Board's jurisdiction since particular dispute was certified to Board almost one year prior to Board's determination not to decide any more disputes involving nonprofit organizations. Consideration of dispute is required by elementary principles of equity and finds abundant precedent in legislative practice which gives only prospective effect to statutory enactment.

For other rulings see Index-Digest 82.710 in this or other volumes.

WAGES—GOING WAGE RATES—Application to hospitals

Hospitals should establish specified minimum job rates and should deduct

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* ED. NOTE: The company petitioned for review of the Regional Board's decision, claiming unfair procedure. The Regional Board, it contended, had directed elimination of beginners' and learners' rates which are eight cents below the minimum common labor rates, without ever giving the company an opportunity to be heard or present written statements on the merits of the issue. The company also contended that this unfair procedure would cause it substantial hardship because it had withdrawn its application for price relief on the assumption that the Regional Board's prior order required only a two-cent increase in beginners and learners rates.

from wages no more than specified amounts for value of room and meals furnished to employees where Regional Board so directed on ground that order corrected substandard rates below 50 cents an hour and represented conservative application of going rates applicable to similar occupations in other industries.

In addition to increased minimum job rates, employees of hospitals are entitled to 4-cent increase in rates paid to individuals to correct interplant inequities, but are not entitled to 15 per cent cost-of-living increases awarded to all employees by Regional Board since no increase is due under 15 per cent rule.

For other rulings see Index-Digest 250.100, 295.201, and 295.340 in this or other volumes.

PREMIUM WAGE RATES—Pay for holidays not worked

Hospitals should continue present practices concerning pay for holidays not worked. Regional Board's order requiring that number of paid holidays be increased from 10 to 11 in two hospitals and from 8 to 11 in third is amended accordingly.

For other rulings see Index-Digest 140.278 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date

Retroactive date for awarded wage adjustments should be date of certification of dispute to Board rather than date of expiration of last contract between union and nonprofit hospital.

For other rulings see Index-Digest 225.338 in this or other volumes.

Majority decision of Board amending decision of Regional Board II (New York). Opinion by Jesse Freidin, public member. Public members concurring: Lewis M. Gill and Nathan Feinsinger. Labor members dissenting from acceptance of company's petition and Pars. II and III: Van A. Bittner, Carl J. Shipley, and Paul Shipman. Employer members dissenting on Pars. I, IV, and V: Earl Cannon, J. Holmes Davis, and Clair Cullenbine.

Interim Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the testimony of record in the above entitled case and having accepted, in so far as it relates to wages, holidays, and vacations, the petition filed by the hospitals for review of the Second Regional War Labor Board's directive order of Oct. 17, 1944, and having reviewed the merits of the case with respect to these issues, hereby takes the following action:

I. Wages. The first sentence of Sec. 1 (b) of the said directive order of Oct. 17, 1944, is modified to read as follows:

Each employer shall grant a wage increase to each employee of four cents per hour.

The remainder of Sec. 1 (b) is affirmed.

Sec. 1 (c) of the said directive order of Oct. 17, 1944, is modified to read as follows:

Employees whose rates, after receipt of the foregoing four-cent increase, are lower than the minimum rates for their classifications as set forth above shall be raised to the said minimum rates for their classifications.

II. Holidays. Sec. 3 of the said directive order of Oct. 17, 1944, is vacated and the following substituted therefor:

Each employer shall continue his present practice with regard to paid holidays.

III. Vacations. Action on this issue is deferred pending further consideration by the Board.

IV. Retroactivity [Beth Israel Hospital]. Par. 7 of the said directive order of Oct. 17, 1944, is modified to provide retroactivity to July 22, 1943, the date of certification.*

V. The remainder of the company's petition for review is denied.

VI. Subject to the provisions of Pars. I, II, III, and IV above, the Second Regional War Labor Board's directive order of Oct. 17, 1944, is affirmed and adopted as the order of the National War Labor Board.

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* Ed. Note: The National Board amended the Regional Board's order concerning increases to individuals on a finding that no increase was due under the 15 per cent rule but that a general increase of 4 cents an hour was justified to correct inter-plant inequities. (Board Press Release B-2199)

† Ed. Note: Present practice of Israel Zion, Beth El, Beth Moses, and Beth Israel is to grant 13, 11, 11, and 10 holidays with pay, respectively. (Board Press Release B-2199)

* The Board reviewed retroactivity only in respect to the Beth Israel Hospital.

Opinion of the Board

Aug. 2, 1945

JURISDICTION

FREIDIN, Public Member:—This opinion is written in response to the question raised by a number of charitable associations as to whether our decision in this case represents a reversal of the administrative policy adopted by the Board on Mar. 2, 1944, in regard to labor disputes involving employees of charitable organizations.

The Board's resolution provides: "The New Case Committee is authorized to return to Conciliation Service cases which involve nonprofit and charitable organizations and cases which involve employers of eight or less who are exempt from the stabilization program." This action was not brought about by any doubts concerning the Board's statutory jurisdiction over such cases. It was promoted by considerations of administrative policy among which was the fact that the wages of these employees had been exempted from the necessity of Board approval under the stabilization program. Those considerations are still valid. The resolution of March 2, therefore, will continue to govern the disposition of cases to which it applies. (Brooklyn YMCA, Case No. 111-6595-D; Brooklyn Public Library, Case No. 111-2802).

To construe our decision in this case as signifying a reversal of the policy expressed in the resolution would be wholly unwarranted for it would fail to take account of the chronology of the case and of the equity which we believe has been created in favor of these employees through the lapse of time and the events that have occurred since the date of certification. The case was certified in July 1943, nearly a year prior to the adoption of the quoted resolution and at a time when the Board's policy in regard to this type of dispute was in a formative stage. (See, for example, Brooklyn YMCA, 10 War Lab. Rep. 376, 17 War Lab. Rep. 249; University of Pennsylvania, 11 War Lab Rep. 82; Young Men's Christian Association, 15 War Lab. Rep. 236; General Hospital of Everett, 19 War Lab. Rep. 882.) The Board's action in the cited cases, the acceptance of certification in this case, and its assignment to the New York Regional Board all in accordance with routine procedure justified these employees in believing that their disputes with the employers were to be heard and decided on the merits. Indeed, the normal processing of the case, despite the employers' jurisdictional objection, may be said to have been implicit with a promise to that effect. We believe it would be a repudiation of that implied covenant were we now to apply to these unusual circumstances an internal policy adopted long after the case was certified. Consideration of the dispute on its merits is, in our opinion, required by elementary principles of equity and finds abundant precedent in legislative practice which normally gives only prospective effect to statutory enactment. We have, therefore, provided terms and conditions of employment, exclusive of any question of union recognition, which we think are fair and equitable to the hospitals and their employees.

Directive Order of Regional Board II (New York)

Oct. 17, 1944

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Job Classifications and Minimum Rates

(a) Job Classification	Hourly Minimum Rate
Nurse	
Registered Nurse	$ .70 *
Undergraduate Nurse	.52 *
Nurses Aide	.50 *
Orderly	.55 *
Social Worker	1.00
Technician	
Bacteriologist	1.40
Chemist	1.25
Hematologist	1.08
Histologist	1.13
Ass't. Bacteriologist	.80
Ass't. Chemist	.80
Ass't. Hemo-t, Histologist	.80
X-Ray Technician	.85 †

* Employer members dissent to this rate.
†Labor members dissent to this rate.

(a) Job Classification	Hourly Minimum Rate	
Pharmacist		
Chief Pharmacist	1.15	
Registered Pharmacist	.92	
Dietician		
Chief Dietician	.85	†
Engineering Staff		
Ass't. Chief Engineer	1.05	
Watch Engineer	.85	*
Carpenter	.93	*
Ass't. Carpenter	.80	*
Electrician	1.00	*
Handyman	.70	
Fireman	.75	*
Painter	.96	*
Laundry		
Washer	.72	
Shaker	.50	
Mangler	.50	
Tumbler	.50	
Ironer	.50	
Assorter	.50	
Seamstress	.50	
Presser	.59	*
Wringer	.59	*
Clerical Worker		
Medical Secretary	.85	*
Secretary	.70	†
Registrar	.75	
Medical Stenographer	.75	
Stenographer I	.55	
Stenographer II	.65	
Typist I	.50	
Typist II	.60	
Clerk I	.50	
Clerk II	.60	
Bookkeeper, Head	1.15	
Bookkeeper	.75	†
Cashier	.75	†
Receptionist	.70	
Ass't. Executive Secretary	1.00	
Medical Record Librarian	1.00	†
Ass't. Medical Record Libra.	.80	
Switchboard Operator	.675	
Maintenance Services		
Porter	.50	
Maid	.50	
Elevator Operator	.50	
Dietary Service		
First Chef	1.04	
Second Chef	.75	
Third Chef	.70	
Kitchenman	.54	
Vegetableman	.53	
Salad Girl	.53	
Dishwasher	.50	
Potwasher	.50	
Handyman & General Worker	.50	

* Employer members dissent to this rate.
† Labor members dissent to this rate.

(a) Job Classification	Hourly Minimum Rate	
Miscellaneous		
Ambulance Driver	.58	†
Morgue Man	.62	†
Ice Man	.60	†
Watchman	.58	†

(b) The employer shall grant a wage increase to each employee equal to 15 per cent of the average straight-time hourly earnings of all its employees as of Jan. 1, 1941. An employee shall receive such an increase whether or not he or she is receiving, as of the operative date of this directive order, the minimum rate above set forth for his or her classification or a rate below or above such minimum rate.

(c) Employees whose rates after receipt of the foregoing 15 per cent increase are lower than the minimum rates for their classifications set forth above shall be raised to the said minimum rates for their classifications.

(d) Minimum rates have been set forth above on an hourly basis to facilitate the computation of earnings of the employees. Employees within the above classifications shall nevertheless be deemed weekly salaried employees with all the rights and privileges that they have enjoyed in the past.

(e) The employer may deduct from the salaries of employees as a maintenance charge no more than $15 per month for room, and, as a board charge, no more than $3.50 per week.

2. Sick Leave, Medical Attention, and Hospitalization

Present practice shall be continued with reference to sick leave, medical attention, and hospitalization.

3. Holidays

All the employers except Israel Zion Hospital shall grant 11 annual paid holidays to their employees. Israel Zion Hospital shall, in accordance with its past practice, grant 13 annual paid holidays to all its employees except its dietary employees, who shall receive 5 annual paid holidays.

4. Vacations

The employer shall grant annual vacations with pay to employees as follows:

Nurses, nurses' aides, and orderlies shall receive three weeks' vacation after one year of employment and four weeks' vacation after two years of employment.

Employees on the professional staff (technicians, pharmacists, dieticians, and social workers) shall receive two weeks' vacation after one year of employment and three weeks' vacation after two years of employment.

All other employees shall receive two weeks' vacation after one year of employment.

All employees with less than one years' employment shall receive a vacation proportionate to that of employees with one year of employment.

5. Split Shifts

Split 12-hour shifts shall be eliminated from work schedules by the employer with all possible speed. Until such time as they are eliminated, the employees employed upon split shifts shall receive a bonus of 10 per cent in addition to their regular wage rates.

6. Basic Workweek

Present schedules of hours of work shall be maintained. The employer shall pay at the rate of time and a half for work performed in excess of 48 hours per week.*

7. Retroactivity

Adjustments resulting from the provisions of this directive order shall be effective as of Apr. 1, 1943 [for Beth Israel Hospital, July 22, 1943, for Beth Moses, Beth El, and Beth Zion Hospitals].

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

8. Duration of Contract (Beth Israel Hospital)

The contract between the parties shall be deemed to run for one year from Apr. 1, 1943. The terms and conditions of employment, as contained therein shall, from the foregoing expiration date, continue to govern the relations between the parties until a new agreement is reached between the employer and the representatives of its employees or until further order of this Board in this or any subsequent proceeding. This shall in no way prejudice consideration of the extent to which the provisions of a subsequent agreement or order shall be given retroactive effect.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs, or has otherwise directed or the parties otherwise agree; provided that any provision of this order directing interim continuance of terms and conditions of employment shall be operative immediately upon the issuance of the order, subject to the right of review, and shall not be suspended or stayed by the filing of a petition for review unless upon consideration thereof the National War Labor Board otherwise directs.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either the employer or the employees may request the National War Labor Board to make the remaining portions of the order immediately operative.

Signed by Emanuel Stein, Walter Gellhorn, Thomas Norton, and Paul Brissenden, public members, with opinion; John A. Zellers, George Le Sauvage, Joseph W. Zeller, and Stephen Mambert, employer members, subject to dissent, with opinion, on holidays, vacations, split shifts, retroactivity, extension of contract, and certain rates; and Peter K. Hawley, William Goff, Walter Payne, and James Edgar, labor members, subject to dissent on sick leave, basic workweek, and certain rates.

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* Ed. Note: In an amended directive order dated Oct 24, 1944, the Regional Board modified this provision to read:

"Present schedules of hours of work shall be maintained. Overtime work performed in excess of the regularly established hours shall be paid for at straight-time rates up to 48 hours of work per week and shall be paid for at the rate of time and a half where the work performed per week exceeds 48 hours."

Opinion of Regional Board II

Oct. 27, 1944

STEIN, Public Member: — The principal issues on which the members of the Regional Board are in disagreement are two: Whether it was proper to take jurisdiction at all and whether the wage questions were, in the light of the circumstances, settled fairly.

JURISDICTION

The factors arguing against assumption of jurisdiction of this case are, without doubt, weighty and entitled to serious consideration. The employer hospitals, like other nonprofit eleemosynary institutions, have been exempted from many of the obligations imposed by statute upon other employers. It is reasonably argued that the public policy implicit in the exemption of such institutions from wage and hour, labor relations, and social security laws dictates a like exemption from the jurisdiction of the National War Labor Board. But decisions on jurisdiction are not for the Regional Board to make. It is the National War Labor Board—not the regional boards—which determines whether or not jurisdiction shall be taken over a labor dispute. When the National Board has acted and has referred a case to a regional board for processing, it is superfluous for the regional board to debate whether or not the act of taking jurisdiction was wise. In the light of the relation of the regional boards to the National Board, it would be inexcusable defiance of properly constituted authority for a regional board to refuse to act on a case which had been referred to it by the National Board.

On July 22, 1943, the Secretary of Labor certified the dispute to the National War Labor Board as one which "might interrupt work which contributes to the effective prosecution of the war and may lead to substantial interference with the war effort and which cannot be settled by collective bargaining or conciliation." In accordance with its established procedures, the National War Labor Board referred the dispute to the Second Regional War Labor Board for hearings and disposition. Both parties were given an opportunity to participate in the hearing before a tripartite panel. The employers, raising the jurisdictional question, refused to participate. On Mar. 30, 1943, the panel submitted a unanimous report. Subsequently, by special authorization of this Board, the employers were given an opportunity to submit and did submit such evidence as it wished to present on the merits.

After full consideration of the evidence submitted, the regional board, in accordance with the authority vested in it by the National War Labor Board, decided the issues in dispute as provided for in its directive order dated Oct. 17, 1944.

Since the Department of Labor has certified to the National Board that the labor dispute involved in this case is one which may materially interfere with the effective prosecution of the war and as the National War Labor Board is directed by the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] and by Executive Order 9017 [1 War Lab. Rep. XVII; WCDS 19] to hear and decide such disputes and as the National Board has accepted jurisdiction over the dispute between the parties set forth above, the majority are of the opinion that the Regional Board's authority to act upon the issues in dispute in this case cannot be questioned.

WAGES

A. Minimum Rates

The dissenting opinion states that increases of from 10 per cent to 40 per cent in minimum rates were ordered. This is an inexact and misleading characterization of what the Board's order does. The minima to which the dissenting opinion refers represent the lowest rate now paid in any of the four hospitals and affect only a few of the employees involved; they do not in any sense reflect the wages which were generally paid by the four hospitals at the outset of this case. The larger increases which this Board has now ordered are based on the substandard principle and effect the lowest paid groups of workers. Thus, the lowest wages paid to a nurse's aide in any one of the hospitals was $.288 per hour while the Board ordered $.50 per hour less maintenance, which represents the increases of 40 per cent referred to above. Nurses' minima were set below the bracket rate of $.75 per hour for industrial nurses and below the minimum rate of $.95 per hour paid by the Henry Street Visiting Nurses' Association. Private nurses hired from agencies or nurses' registries receive a standard rate of $1.00

per hour plus meals when on duty. The Board ordered a rate of $.70 per hour for registered nurses on floor duty. The qualifications for all these jobs are identical.

In the case of the technicians, the Board ordered minima which corresponded to those now being paid, except for the X-ray technicians, where an hourly rate of $.15 above the lowest minimum now paid was set, based upon wage data available from dentist and doctors for this group.

The minima ordered for maintenance employees were set at the level of minimum rate which now prevail among buildings generally in New York City. The present minima are slightly below these levels.

The minima for six out of nine of the laundry classifications were fixed at $.50 per hour to correct substandards; the remaining three jobs were set to preserve the existing intra-plant differential.

The majority of the minima for clerical occupations were set below the range minima brackets established by the Board for all types of establishments in the New York metropolitan area. Although hospitals require more highly skilled clerical employees than does the average business office, the present scale is considerably below the level that prevails among business establishments.

Rates for the dietary departments were set either at $.50 per hour or slightly above to conform to the lower restaurant brackets and in no case represented more than $.08 per hour increase in the lowest rate paid by any of the 4 hospitals to any 1 of its employees in these classifications.

B. General Increase

In their dissenting opinion, the industry members state that the directive order ignores the fact that the employees involved have received increases in excess of 15 per cent since 1941. However, the hospitals provided neither the Board nor the panel with a record of wage adjustments which would dispute the union's claim that no general increases have been granted since January 1941. Despite the repeated opportunities to present wage data, the employers offered nothing which refuted the position of the union.

Had the Board followed its usual procedure and calculated the general increase due the employees under the gross inequity doctrine, a greater increase than ordered by the Board would have resulted. On the basis of the present low rate structure of the hospitals, it is reasonable to assume that their average straight-time earnings in January 1941 would be less than $.60 per hour, most probably in the neighborhood of $.50 per hour. This means that the general increase granted will amount to approximately $.075, or at the most $.09 per hour.

When examining the wage structure approved by the Board, it should be noted that all allowances for maintenance must be deducted from the cash wages paid to the employees. This allowance in the case of full maintenance amounts to $.17 per hour on a 40-hour week.

SICK LEAVE

No change in existing practice was ordered by the Board.

HOLIDAYS

Present holiday practice varies among the four hospitals. The Board's order directed 11 paid holidays for three of the hospitals and a continuance at Israel Zion of 13 days. Holiday practice in industry varies. Eight to 12 paid holidays (when not covered by Executive Order No. 9240 [8 War Lab. Rep. XXVII, 26 War Lab. Rep., No. 3, IX; WCDS 20]) are not uncommon in services and trades. In nonprofit and charitable institutions generally, it is the practice to give all legal holidays, and in Jewish institutions practically all legal and religious holidays are observed. It is the Board's information that the directive order in respect to holidays is somewhat less liberal than prevailing practice.

VACATIONS

The vacations (two weeks after one year) granted to clerical employees were in line with Board policy on white collar occupations. Two weeks were also given to classes of workers other than nurses and professional employees in recognition of the hospitals' policy of granting uniform vacation periods to clerical and other groups of workers.

The more liberal vacation periods for the nursing and professional staffs were ordered in recognition of the extraordinary strain under which these departments are functioning. It may be said, further, that it is customary for nurses and technicians to receive longer vacations than white collar

workers in private hospitals and doctors' offices.

SPLIT SHIFTS

The Board ordered a ten per cent split-shift premium until such time as the split shifts could be eliminated. The dissenting opinion alleges that there is no basis for this order in prevailing practice. The restaurants and hotels are cited as comparable. However, in accordance with the policy of state agencies regulating restaurants, split shifts have been practically eliminated. A few private clubs still work on a split-shift basis, but employees on the shift do receive some premium payment. Upon application, premium payment will be approved by the Board for split-shift operations in restaurants and hotels.

BASIC WORKWEEK

The conditions as to hours of work and premium pay were ordered to conform as nearly as possible to nationally accepted standards without burdening the hospitals unduly. Hospital practice in regard to overtime varies depending upon the needs of the individual institution. The Presbyterian Hospital recently petitioned this Board for permission to pay time and one-half after eight hours per day to all kitchen and maintenance personnel—800 workers, and this Board ruled that approval was not required under General Order 26 [21 War Lab. Rep. LXIII, 26 War Lab. Rep., No. 4, VII; WCDS 141] (2-43730).

Dissenting Opinion of Employer Members of Regional Board II

Oct. 5, 1944

ZELLER, Employer Member:—The industry members dissent from these directives, which increase the rates of pay and impose radical and costly changes in the working conditions of the employees, which increases must now be paid by each of the four hospitals referred to in these directives. These increased costs are also imposed retroactively upon three of the hospitals from July 22, 1943, and upon Beth Israel from Apr. 1, 1943.

BACKGROUND

The issues are of great importance and affect the hospitals, their employees, and the public at large. The four hospitals properly claim that the Board should decline jurisdiction because it involves the rates of pay and working conditions of four charitable religious organizations which have been continually performing a substantial public service for the community at large. They are local institutions, and the dispute does not affect the war effort. The hospitals are supported in part by public funds, including monies received from the City of New York and the U. S. Public Health Service. These four hospitals are only a small segment of the 77 voluntary hospitals which provide more than half of the hospital care given in New York City, much of it free or less than cost. At the present time, we are in the midst of a United Hospital Fund drive, seeking the amount of $1,555,000, which is the difference between income received from the City of New York, the U. S. Public Health Service, the patients, the Associated Hospital Service, from bequests and gifts, and actual costs. Each of these four hospitals to which the directives of this Board apply has a financial problem.

For the year ended Dec. 31, 1943, Beth Israel Hospital had a deficit, after deducting monies received from the City of New York and the U. S. Public Health Service, of $232,246.78. This deficit was made up in part by amounts received from the Federation of Jewish Philanthropic Societies, the United Hospital Fund, and other gifts. A similar deficit at Beth Moses Hospital was in the amount of $78,766.82. It was made up in the same manner. A similar deficit at Beth El was in the amount of $58,098.25 and was also made up in a similar manner—by gifts and contributions. Israel Zion Hospital had a deficit for the six-month period ending June 30, 1944, before contributions, of $45,834.40. These hospitals, due to the war, are now required to pay additional expenses because of increased costs of materials, supplies, drugs, and increased wages already awarded to their employees. These hospitals continue to make their services available to the ill and injured of the city, regardless of race or ability to pay. Their splendid record of public service should not be overlooked or disregarded in passing upon the issues referred to hereafter.

GENERAL INCREASES

First, a part of the directive orders each of the hospitals to grant a general wage increase of 15 per cent of the rates paid on Jan. 1, 1941, and ignores the fact that most of the employees in each of the hospitals have received substantial increases which

equal or exceed the amount of 15 per cent. At the panel hearing, the union eliminated consideration of this item as it did not ask for increases based on the Little Steel formula but only for the establishment of minimum rates, which this Board has also ordered. The Board has ignored the fact of these increases already allowed. For instance, in the case of Beth Israel Hospital, there was a general increase of seven per cent granted to all employees on Dec. 1, 1941, and another seven per cent increase was granted to all employees on Mar. 14, 1943, and a three per cent increase was granted to all employees on Dec. 16, 1943. Representatives of the union even protested one of these increases by circulating handbills and directing a telegram to the superintendent of the hospital. Beth Moses had general increases totalling 17 per cent. The Beth El Hospital has also granted general increases totalling 38.71 per cent, and Israel Zion had general increases totalling 31.04 per cent. None of the increases above referred to have been totalled or deducted in order to arrive at the increase which is now directed. This information could have been obtained by subpoena or other process of the Board, but the majority of the Board failed to make any investigation as to the amount and number of general increases granted by any of the hospitals.

MINIMUM RATES

Second, the increases in the minimum rates were also made without proper or careful study or investigation by the Board. Although there are 77 voluntary hospitals in the City of New York, the minimum rates were raised arbitrarily by comparison with the highest rate paid in any of the four hospitals without evidence to establish the general average of rates paid in the remaining 73 voluntary hospitals in New York City. The minimum hourly rates for nurses, trainees, nurses' aides, and orderlies and for clerical and professional workers have been increased from 10 per cent to 40 per cent; and the minimum rates of most of the other classifications were increased by similar percentages. The minimum rates herein ordered are in many cases higher than the rates now paid by a substantial cluster of New York private hospitals.

HOLIDAYS

Third, on the paid holiday issue, Beth Israel Hospital now observes eight holidays and pays for them. The Beth El and Beth Moses Hospitals observe and pay for 10 holidays, and Israel Zion pays for 13 holidays. Although no statement was made or proof offered as to the prevailing practice as to the number of paid holidays among the other 73 hospitals in New York City, these directives direct pay for 11 holidays not worked for all employees. This is higher than the prevailing practice in the area. The hospitals should be permitted to continue their past practice on holidays, which already exceeds the prevailing practice in this area and in this nonprofit industry.

VACATIONS

Fourth, as to vacations, the directives increase the vacation for nurses, nurses' aides, and orderlies from two weeks with pay to three weeks after one year and four weeks after two years and also increase the vacation allowances for employees on the professional staff to three weeks after two years; also proportionate vacations were ordered for employment of less than one year for all employees. These increases are directed without proof of any such prevailing practice in this industry or in the area and will cost the hospitals a substantial sum of money.

SPLIT SHIFTS

Fifth, the directives require the hospitals to pay a bonus of ten per cent to all employees working on split shifts and require elimination of such shifts as speedily as possible. There is no basis in this industry for imposing such a penalty upon the private hospitals, many of which have had a practice of using split shifts for many years. Certainly in the dietary department, where three meals are served per day, it is common practice to have split shifts in the hospitals, even as it is in hotels and restaurants, and no penalty should attach to this practice. Likewise, in the case of resident nurses and resident trainees, if the hospitals can operate more efficiently and economically by split shifts to meet the needs of the patients and there is a practice to this effect by a group of hospitals, the Board should not direct a change in such a practice during wartime. It is an old practice whereby nurses were permitted to rest for a period of an hour or two in the middle of the day, resuming their work in the afternoon, and, in the case of resident nurses and trainees, such practice should not be criticized.

BASE WORKWEEK

Sixth, the regulation of overtime in excess of 48 hours, in addition to the other increases in rates described, and the application of these changes to the retroactive dates of Apr. 1, 1943, and July 22, 1943, respectively, impose heavy penalties upon these hospitals, already operating with heavy losses, with the partial assistance of public funds and gifts from the public.

JURISDICTION

The industry members are of the opinion that jurisdiction should be denied to this dispute, even as it was in the case of the Brooklyn Public Library, where the National Board denied jurisdiction of a dispute dealing with a nonprofit organization supported in part by public funds. In any event, there are many reasons why these four hospitals should be allowed to pay present rates already increased by more than 15 per cent above Jan. 1, 1941, and to provide working conditions for their employees in accordance with their own past practices, which, indeed, for all that appears in this case, are as good as the prevailing practices employed in other private hospitals in this city. General wage increases and other changes in working conditions should only be granted for specified reasons in accordance with the wage stabilization regulations. These special reasons or exceptions to wage stabilization orders are not proved in this case, and the continuation of existing practices and wages in these particular cases would seem to be highly in the public interest in view of the peculiar circumstances surrounding the operation of private hospitals.

INTERNATIONAL MILLING CO.—

Decision of National Board

In re INTERNATIONAL MILLING COMPANY [Sioux City, Iowa] *and* UNITED MILLING WORKERS INDUSTRIAL UNION, LOCAL 1331 (CIO). Case No. 111-5252-D, May 27, 1945 (made public Aug. 7, 1945).

PREMIUM WAGE RATES—Shift premiums, denial—Lack of industry or area practice—Rotating shifts

Employees of milling company operating rotating shifts are not entitled to night-shift premiums granted by Regional Board where Regional award was not justified by industry or area practice.

For other rulings see Index-Digest 140.575 in this or other volumes.

Majority decision of Board vacating decision of Regional Board VII (Kansas City). Public members concurring: Edwin E. Witte, Jesse Freidin, and Dexter M. Keezer. Employer members concurring: Hoey A. Hennessey, Earl N. Cannon, and Walter Knauss. Labor members dissenting: Van A. Bittner, John Brophy, and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of amended directive order dated Jan. 17, 1945, of the Regional War Labor Board for the Seventh Region issued in the above entitled case and having reviewed the case on its merits, hereby decides the disputes between the parties and orders.

I. The terms and conditions of employment set forth in the Seventh Regional War Labor Board's amended directive order of Jan. 17, 1945, in this case shall govern the relations between the parties with the following modification:

A. Night-Shift Bonus

Par. I of the said directive order which relates to this issue is hereby vacated.*

II. Subject to the provisions of Par. I. (A) above, the terms and conditions of employment set forth in said amended directive order of Jan. 17, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Amended Directive Order †

Jan. 17, 1945

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 12, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby rescinds its action in its directive order of Apr. 28, 1944, on Issue No. 11, night-shift bonus, and orders in lieu thereof the following:

1. Night-Shift Bonus

A premium payment of three cents (3¢) per hour above the regular rate of pay shall be made for the second shift, and premium payment of five cents (5¢) per hour shall be made for the third shift.

2. Retroactivity

The wage adjustments ordered in Par. No. 1 above shall be effective retroactive to Apr. 19, 1944, the date of the previous Board action.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect seven (7) days from the date hereof unless, in the meantime, a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Signed by Russell S. Bauder and Frank T. Stockton, public members; L. L. Brown and Glenn R. Reed, employer members; and Sol S. Rosner and John I. Rollings, labor members, subject to dissent on Issues 1 and 2.

Report and Recommendations of the Panel *

Jan. 19-20, 1945

PARTIES TO THE DISPUTE

The International Milling Company was incorporated on Mar. 31, 1933, under the laws of the State of Dela-

* Ed. Note: The Regional Board's decision was rendered after its prior award of shift premiums had been remanded for reconsideration in the light of industry and area practice. The Regional Board had area practice surveyed. The Regional Board's action, however, was not based on industry or area practice but was based on a formula which it had adopted subsequent to the remand order and subsequent to the Basic Steel decision, 19 War. Lab. Rep. 568. Under this formula it granted three and five-cent premiums in disputes where there was no established industry or area practice of paying shift premiums. The Regional Board has subsequently modified the formula in the light of the Stabilization Director's fringe directive, 23 War Lab. Rep. No. 4, V; WCDS 537. (Information supplied by WLB staff.)

† Ed. Note: The amended directive order was issued pursuant to a National Board directive order of Aug. 1, 1944, remanding for reconsideration, in the light of industry and area practice, the night-shift provision of the Regional Board's order of Apr. 28, 1944, which had directed a five-cent bonus for the second and third shifts.

* Ed. Note: Only that portion of the panel report relating to night-shift bonus is reproduced.

ware. This was a reincorporation date, the company having been in the milling business for more than 50 years. The Sioux City plant, which is involved in this case, is located at 41st and Cleveland Streets, Sioux City, Iowa.

The company, however, owns and operates seven other plants in the United States, located at New Prague, Minn.; Wabasha, Minn.; Davenport, Iowa; Greenfield, Tex.; Buffalo, N. Y.; Baldwinville, N. Y., and Detroit, Mich. The company is also the owner of additional plants in Canada.

The plants located at New Prague and Wabasha, Minn., are unorganized. The other plants in the United States have a master labor contract with the American Federation of Grain Processors, affiliated with the American Federation of Labor.

Normally the company is engaged in the manufacture of flour and feed, but during the past year they have manufactured "Alcomeal." The daily production is approximately 1,500 barrels of Alcomeal, 1,500 barrels of flour, and 125 tons of feed.

Alcohol is distilled from the Alcomeal and is used to make synthetic rubber and smokeless powder. Originally Alcomeal contracts were made directly with the Government, but it is now shipped to distillers who in turn produce the alcohol solely for the Government. This part of the company's business is therefore entirely for war purposes while the other products are food products and therefore essential to the war effort.

There has been no evidence submitted that the company has been subject to renegotiation.

The company now employs 103 persons at its Sioux City plant. This number includes the department heads, department foremen, salesmen, office force, as well as the production force. The personnel involved in this dispute number 69, all of whom are male employees.

The union involved is the United Milling Workers Local Industrial Union No. 1331 (CIO) and has for its membership not only the workers employed by the International Milling Company but those employed in the milling industry in Sioux City, Iowa. It is an industrial type of union and represents the employees of the International Milling Company and Nutrena Mills, Inc., of Sioux City, on a plant-wide basis.

BACKGROUND

At an election conducted by the National Labor Relations Board on Aug. 12, 1943, 63 employees were eligible to vote. Fifty-seven persons voted for the union with the result that the union was certified as the bargaining agent by the National Labor Relations Board on Aug. 18, 1943. The parties have been in a bargaining relationship since that date.

There was no evidence introduced of any previous organization of the employees at this plant nor is there any evidence of any previous contract. The present contract under dispute is therefore a first contract.

In the early part of September 1943 the union presented a proposed form of agreement to the International Milling Company, and meetings were held between Mr. Charles Ruoff, general manager of the Sioux City plant, and representatives of the union. On Oct. 11, 1943, the company submitted a counterproposal to the union. Continued negotiations did not result in agreement, and the union called upon the Conciliation Service for assistance.

On Oct. 31, 1943, Commissioner Walter C. White was assigned and entered the case. He met with representatives of the union and company on Nov. 7 and 8, 1943. While the parties were brought close to an agreement on a number of contract clauses, a deadlock was reached on 12 principal issues. There have been no strikes or lockouts.

The case, therefore, was brought before the panel on Jan. 19, 1944, in the Federal Building at Sioux City, Iowa. The panel found, from an examination of the briefs of both parties and then by agreement at the commencement of the hearing, that the following issues were in dispute:

ISSUES

(1) Union maintenance or open shop,
(2) Check-off,
(3) Weekly guarantee of hours,
(4) Overtime for particular hours' or particular days' work,
(5) Seniority and transfer,
(6) Pay for holidays not worked,
(7) Vacation pay,
(8) Pay for sick leaves,
(9) Leave of absence,
(10) Previous working conditions,
(11) Bulletin boards,
(12) Wages, and

(13 Variations in the wording of various clauses in the union proposal and the company's counterproposal.

[ED. NOTE: Issues 1 through 11 and that portion of Issue 12 relating to general wage increase are omitted.]

12. Wages (Night-Shift Premium)

The union proposes that five cents per hour be paid for all nightwork performed.

The company is opposed to a differential for the night shifts and claim that this should not apply to the milling industry, which operates on a rotating-shift basis. They cite recommendations of the referee in the Quaker Oats Company case, No. 2972-CS-D [7 War Lab. Rep. 504], and other directive orders where night-shift differentials have been disallowed to employees on rotating shifts.

A majority of the panel recommends that, in respect to the night-shift differential, a bonus of five cents per hour shall be paid to all employes who work on either the second or third shift. Such bonus is recommended on the basis that this has frequently been the practice in other industries in recognition of the fact that working during these hours disrupts normal living conditions.

[ED. NOTE: Issue 13, discussed in the panel report at this point, is omitted]

Signed by E. W. Dunn, representing the public; Henry C. Doerr, representing employers, subject to dissent with opinion on night-shift bonus; and Frederick W. Knight, representing labor, subject to dissent with opinion on check-off.

Dissenting Opinion of Employer Representative

NIGHT-SHIFT BONUS

After hearing testimony presented and also after further personal investigation, I am absolutely convinced that rotating shifts are a part of the milling industry and that the International Milling Company basic wages have been figured with rotating shifts in mind, and I also feel it is fair to assume the employees accepted their work on an hourly wage knowing they would be rotated and that the demand for additional compensation for evening-and nightwork over and above regular rotating shift wages as in effect in the milling industry is an unfair application of the general principle of wage, differentials for nightwork.

The usual application for evening and night wage differential is in the type of industry where emergency has resulted in the industry necessitating operating with the evening or night shift, or both, where the normal operation was daytime work only, and under these circumstances it is quite obvious the hourly rate fixed for this type of operation is fixed and accepted by the employee with the thought in mind that the employee normally worked only day time—when evening or night shifts are set up and employees are required to work these shifts, it is only reasonable to assume bonus pay should be paid for nightwork to compensate employees for the inconvenience to them of nightwork over straight daywork.

This, however, is not the situation in the milling industry for in this industry 24-hour operation with rotating shift has been and probably always will be a part of the milling operation. The war or shortage of manpower has not changed the milling method of operation as to evening- or nightwork—they are still rotating shifts.

The custom generally among competitors in the milling and similar industry on around-the-clock operation with rotating shifts is not to pay bonus for nightwork, and, in this connection, I call your attention to the many War Labor Board cases sighted by the employer in its brief and to the statement by the Board as follows:

"Since all of the shifts are on a rotating rather than on a permanent basis, no employees suffer any undue hardship."

The milling industry like most industries is on a competitive basis both from the standpoint of sale of its products and the hiring of employees, and it is quite obvious that employees induced to enter the industry competitively take in consideration they are to work part time on the evening or night shift and their rate of pay is figured in a higher bracket by the employer than if these employees were to work only on day shift.

The above being true of the milling industry, bonus payment for evening- and nightwork in this instance would

create precedent and impose on this particular employer a night differential that would be competitively unfair and tend to inflate wages above the present wage bracket based on wages paid for rotating-shift method of operation.

Signed by Henry C. Doerr, representing employers.

MONTGOMERY WARD & CO.—

Decision of National Board

In re MONTGOMERY WARD AND COMPANY [Baltimore, Md.] *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, WAREHOUSEMEN AND DISTRIBUTION WORKERS UNION, LOCAL 219 (CIO). Case No. 111-5443-D, Aug. 1, 1945.

WAGES—COST-OF-LIVING ADJUSTMENTS—Application of 15 per cent rule—Individual increases

Employees of mail order house are entitled to 7-cent general increase under 15 per cent rule, despite company's contention that increases granted in minimum rates and to groups of individuals constitute general increases satisfying rule. Treatment of such increases as merit increases rather than general increases is in accordance with decision in earlier case involving same issue at another plant of company. Awarded increase should be applied to minima and maxima of existing rate ranges as well as to individuals.

For other rulings see Index-Digest 245.317 in this or other volumes.

WAGES — SUBSTANDARD RATES—Order not necessary

Regional Board's order raising minimum rates and closely related rates under substandards citerion is vacated where Board finds larger plant-wide adjustment is justified under 15 per cent rule.

Unanimous decision of Board amending decision of Regional Board III (Philadelphia). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members concurring: Delmond Garst and Paul Chipman. Employer members concurring: William Maloney and Earl N. Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered further the union petition for review of the Third Regional War Labor Board's directive order of Sept. 13, 1944, with regard to a general wage increase, and having reconsidered that part of the interim directive order issued by the National Board on Mar. 2, 1945, which relates to the company petition for review of the provisions of the Third Regional War Labor Board's directive order of Sept. 13, 1944, with respect to rate ranges for certain classifications and having reviewed the merits of the case with respect to these issues, hereby orders:*

I. Sec. I 10 (a) and (b) of the said directive order of Sept. 13, 1944, is hereby vacated.

II. Sec. III (3) of the said directive order of Sept. 13, 1944, is hereby vacated and the following substituted therefor:

A general wage increase of seven cents an hour, based on maladjustments, shall be granted to all employees. The increase shall be applied to individual rates and to the minima and maxima of the company's existing rate ranges.

Interim Directive Order

Mar. 2, 1945

By virtue of and pursuant to the powers vested in it by Executive Order

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* ED. NOTE: In its petition for review of the Regional order, the union requested that the 15 per cent rule be applied in the way that it had been applied to units of the company in Chicago, 3 War Lab. Rep. 99, or St. Paul. In the Chicago case, extensive computations were made as the basis for estimating which increases granted since January 1941 should be considered general and which should be considered as only merit increases. In the St. Paul case, the Regional Board at Chicago determined that all adjustments in minimum rates and individuals' rates should be discounted as not being general increases. The National Board refused to review the Regional Board's decision.

The Board's staff found that application of the St. Paul approach to the instant case would justify an increase of 7.1 cents. (Information supplied by WLB.)

9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed by the company and the union for review of the Third Regional War Labor Board's directive order of Sept. 13, 1944, in the above entitled case, hereby decides the dispute between the parties and orders:

I. General Wage Increase. Action on the union's petition for review of this issue is deferred pending receipt of information from the Regional War Labor Board as to the application of the Little Steel formula in this case.

II. The remainder of the union's petition for review is hereby denied.

III. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Third Regional War Labor Board's directive order of Sept. 13, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Signed by Dexter M. Keezer, Edwin E. Witte, and Lewis M. Gill, public members; Lee H. Hill, Hoey Hennessy, and Walter Margetts, employer members, subject to dissent on Pars. I and III; and John Brophy, Delmond Garst, and Robert J. Watt, labor members subject to dissent on Par. II.

Directive Order of Regional Board III (Philadelphia)

Sept. 13, 1944

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. (1) Grievances within the meaning of the following grievance procedure shall consist only of disputes about working conditions and about the interpretation and application of particular clauses of the agreement of the parties, including alleged abuses of discretion by supervisors in the treatment of employees.

(a) The employee may, either directly or through the union steward in his department, present a grievance to his immediate supervisor or to the department head.

(b) Grievances which are not adjusted satisfactorily at this level shall be submitted to the union grievance committee and discussed by the grievance committee with the company's grievance officers or local manager.

(c) Grievances which are not adjusted at this stage shall be presented by the international president of the union or his designated representative and shall be discussed with a view toward final disposition of the grievance.

(d) If adjustment appears impossible within 30 days from the presentation of the grievance, the grievance shall be referred to a board of arbitration consisting of one representative of each of the parties and an impartial chairman. If the parties cannot agree on the selection of an impartial chairman or on a method for his selection, the Regional War Labor Board will make such appointment at the request of either party.

(e) The parties shall determine by negotiation the division of the 30-day period amongst the first three steps (a), (b), and (c) of the above procedure.

(2) (a) In filling vacancies and determining layoffs, call-backs, transfers, and demotions, seniority shall govern where ability is substantially equal; where ability is not substantially equal, the greater ability shall prevail. Seniority shall be by departments or any such larger or smaller groups as the parties may from time to time agree upon.

(b) Department stewards shall, at all times, top the seniority list or lists in their respective departments, the chief steward topping all departments.

(c) The parties shall negotiate the details of applying these seniority provisions, including such things as: The use of seniority lists, accumulation of seniority, probationary period, conditions for loss of seniority, notification

in case of call-backs, seniority for part-time workers, etc.

"(3) All employees who, on Sept. 28, 1944, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"If a dispute arises as to whether an employee (1) was a member of the Union on the date specified or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by a hearing officer to be appointed by the Regional War Labor Board. The decision of the hearing officer shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, a hearing officer will be selected by the Regional War Labor Board, on due application. The decision of the arbitrator or hearing officer shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

(4) The company shall deduct from the wages and turn over to the proper union officials the initiation fees and monthly dues of such members of the union as individually and voluntarily certify in writing that they irrevocably authorize such deductions for the term of the contract.

(5) The contract shall be made effective as of Dec. 13, 1943. It shall extend for a period of one year from the date of signature and shall be automatically renewed thereafter from year to year unless either party, at least 30 days before the anniversary date, gives notice in writing of its intention to terminate or change the contract. If notice of change only is given, the balance of the contract for which change is not requested shall continue in force. The wage provision of the contract shall be subject to reopening six months after the date of signature and at six-month intervals thereafter. Wage reopening shall require notice 30 days prior to the expiration of any six-month period.

(6) In addition to the present system of overtime for all work performed beyond 40 hours per week, overtime at the rate of time and one-half shall be paid for all work beyond 8 hours in 1 day and at doubletime for all work on the seventh day worked in any week. Both daily and weekly overtime shall not be paid for performance of the same work.

(7) A shift premium of five cents per hour shall be paid for all work other than overtime work performed on any shift other than the day shift. There shall be no pyramiding of the shift premium and overtime after eight hours in one day.

(8) (a) An employee elected or appointed to a position with the union shall, upon request, be granted a leave of absence without pay covering the period of his service with the union. His seniority shall accumulate during the period of such service.

An employee elected or appointed as a delegate to a convention or conference or to other temporary work of the union shall be granted a leave of absence without pay to perform those duties.

(b) The general time limits for which such leaves shall be granted shall be negotiated by the parties.

(9) The matter of the propriety of the demotion of a union member, William Mackey, to a job carrying a lower rate of pay and the company's refusal to allow the posting of union notices on bulletin boards in the plant

shall be adjusted through the grievance machinery established in Sec. I (1) of this order.

(10) (a) The following rate ranges shall replace those presently in effect for these classifications:

Job Classification	Rate Range
I A	$.50-$.55
B	.55- .60
II A	.50- .65
B	.50- .70
III A	.55- .70
IV A	.55- .75

(b) Immediate adjustments shall be made in the rates of all persons in the above classifications, who are below the minima of the ranges, to bring them to the range minima. Other immediate adjustments shall be made within these classifications which will raise the weighted average hourly rate to the mid-point of the new range for each classification if it is below that mid-point. Any further adjustments must be made within the limits of General Order No. 31 [23 War Lab. Rep. No. 1, IV, 26 War Lab. Rep., No. 4, VII;, WCDS 143].

(11) All monetary adjustments contained in the provisions of this order shall be retroactive to Dec. 13, 1943.

The procedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. (1) The union's request for inclusion in the contract of a clause prohibiting discrimination in hiring or in any terms or conditions of employment on the basis of color, race, creed, or nationality is denied. This action is taken because the Board feels it is unnecessary to order such a clause written into a contract in view of the already existing governmental regulations and facilities for enforcing such a prohibition.

(2) The union's request for inclusion in the contract of a clause requiring the establishment of a labor-management committee is denied for the reason set forth in the panel report.

(3) The union's request for a general increase except as partially granted in Par. I(10) is denied.

(4) The Board has refrained from passing on the union's request, as contained in its comments, that the Board rule on other union wage demands for the reason that these issues were not clearly enough defined in the union's brief to enable the Board to rule on these issues at this time.

IV. This order shall stand confirmed as the order of the National War Labor Board 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree, provided that the 15-day period applicable to Par. I, (3), shall run from the date of this order.

V. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by William N. Loucks and Francis D. Tyson, public members; William F. Downs and Herbert L. Badger, employer members, subject to dissent on Pars. I(2)(b), I(3), I(4), and I(8); and John P. Harrington and Lionel D. Brodeur, labor members, subject to dissent on Pars. I (10)(a) and III (3).

Final Report and Recommendations of the Panel

WAGES

An interim report dealing with the nonwage issues in this case was submitted to the Regional Board on Mar. 1. This report deals with the wage issues only and includes the panel's recommendations on this case.

Position of the Parties

The union has requested a general increase of 22½ cents per hour for all workers, a minimum starting rate of 65 cents per hour, and two automatic increases of 5 cents each at the end of the third and sixth months of work. The minimum rate for workers with six months' service would thus be 75 cents per hour.

The company maintains that no general increase in wage schedules or in actual wage payments should be granted. It is in process of requesting permission from the Regional Board for adjustment of a number of individual rates, mainly in the higher job classifications. The union advances two main arguments in support of its request: (1) That wages of a large proportion of the workers in the bargaining unit are substandard on the basis of standards established by the Regional Board for voluntary wage adjustments and on the basis of living costs in the area. A considerable amount of family budget material was presented by the union at the hearing, with the object of demonstrating that the company's employees cannot maintain minimum living standards on the basis of the wages they receive. (2) The union contends that no general wage increase has been granted by the company since January 1941 and that a 15 per cent increase is therefore justified under the maladjustment formula. It contends further that the maladjustment formula should be liberalized because the cost of living has risen more than the official Bureau of Labor Statistics data show. Information on living costs compiled by a joint committee of AFL and CIO members was cited by the union in this connection.

The company contends (1) that its rates are slightly above those paid by Butler Brothers, which is the most nearly comparable firm in Baltimore. (2) That its wage rates are not substandard. (3) That average hourly earnings of workers in the bargaining unit have increased by 42.3 per cent since Jan. 1, 1941, and that at least 22.1 per cent of this has resulted from general wage increases. The provisions of the maladjustment formula have therefore been complied with, and no further increase is justified on this count. As noted above, the union denies that any general increase has been given and contends that the entire increase in average hourly earnings since January 1941 has resulted from merit increases and promotion and upgrading of workers and other wage changes which cannot be regarded as general wage increases.

Discussion

The panel is of the opinon that no wage inequities exist in this case. Butler Brothers, a Baltimore wholesale firm, appears to be most nearly comparable with Montgomery Ward's mail order operations and its wage rates for most classifications are below those of Montgomery Ward. The rates paid by Montgomery Ward for unskilled workers are considerably below the rates paid by manufacturing firms in the city for common labor, but the panel is of the opinion that most laboring work in manufacturing is not comparable with the work done at Montgomery Ward.

The panel considers that the company's minimum rates of 45 cents per hour for job classifications 1-A and 2-A should be regarded as substandard rates. The Regional Board has already established a rate of 50 cents as the substandard minimum for the Baltimore area in voluntary wage cases. On the basis of the evidence presented by the union, the panel believes that rates below this do not permit of even a bare minimum standard of living. In this connection, the company has argued that few workers actually receive the 45-cent rate and that workers in these job classifications are promoted automatically to 50 cents at the end of 30 days. This promotion, however, is actually not automatic but dependent upon the supervisor's judgment of the employee's ability. Workers could therefore remain at the 45-cent rate for considerable periods and the fact that a relatively small number of workers may be involved does not affect the substandard principle. The panel therefore recommends below that these minimum rates be increased to 50 cents per hour and that certain modifications be made also in rates immediately adjacent to these minimum rates in order to prevent disruption of the internal wage structure of the plant.

The brief submitted by the company indicates that average straight-time hourly earnings increased 42.3 per cent between January 1941 and January 1944. A considerable part of this increase is certainly the result of the promotion and upgrading of workers, and some of it is due to the fact that a larger percentage of the working force is now in the higher wage brackets than was the case in January 1941. But not all of the increase can be accounted for in these ways. It is true that the company has never announced a general wage increase. On six occasions, however, it has given, simultaneously, increases to a considerable number of workers, the number varying between 10 per cent and 50 per cent of the working force.

This appears to have come about through the raising of minimum rates which were becoming obsolete in a rising labor market. As a result of these changes in wage brackets, it was necessary on each occasion to raise a certain number of individual workers. On the basis of previous Board decisions, it would appear that these increases should be counted as general wage increases. They amount in total to a 22.1 per cent increase over the three-year period.

It should be pointed out, however, that this conclusion is not completely certain. One cannot be sure whether the figure of 22.1 per cent still includes some individual merit increases which happened to be given at the same time that general adjustments were made. Since no evidence is available on this point, the panel cannot say with complete certainty that the provisions of the Little Steel formula have been complied with. The chairman and the industry member of the panel are reasonably well satisfied that the terms of the formula have been met, while the labor member of the panel has serious doubts on this point. We point out this deficiency in the evidence with the thought that the Board may wish to request additional information from the parties in order to provide a more certain basis for a decision.

With respect to the union's contention that the maladjustment formula itself should be increased above 15 per cent, the panel expresses no opinion. The National Board is in process of reconsidering basic policy on this point, and we do not think that it would be appropriate for a Regional Board panel to make a recommendation on the subject until the Board's decision has been announced.

RECOMMENDATION

The panel's recommendations for changes in the present wage schedule of the company are set forth in the following table. On the basis of the substandard policy of the Board, we recommend that the minmium rate or jobs classified as 1-A or 2-A be raised from 45 cents to 50 cents per hour and that the other rates within these grades also be raised by 5 cents per hour. This is clearly necessary in the case of job classification 1-A, since, if the maximum rate of 50 cents were left unchanged, the minimum rate would then be the same as the maximum rate. We believe that it is also necessary to raise the maximum rate for jobs in group 2-A from 60 cents to 65 cents an hour in order to maintain the 15-cent spread which the company has established for all jobs in Group 2.

Job Classification		Present Rate Range	Recommended Rate Range
I	A	$.45-$.50	$.50-$.55
	B	.50- .55	.55- .60
	C	.60- .65	No Change
II	A	.45- .60	.50- .65
	B	.50- .65	.55- .70
	C	.60- .75	No Change
III	A	.50- .70	.55- .70
	B	.60- .75	No Change
	C	.70- .85	No Change
IV	A	.50- .75	.55- .75
	C	.70- .90	No Change
V	A	.80- .85	No Change
	C	.75-1.00	No Change
VI			No Change

In order to prevent inequities in the internal wage structure, an adjustment is necessary also in the minimum rates which now begin at 50 cents [Job Classifications 1B, 2B, 3A, and 4A]. If this were not done, these jobs would start at the same rate as jobs in 1-A, which is the lowest classification in the plant. This would be bound to cause serious discontent among workers in the upper grades. We therefore recommend that minimum rates for these 4 job classifications be increased from 50 cents to 55 cents per hour. With respect to maximum rates in these grades, we believe that a five-cent increase is the maximum for Classifications 1-B and 2-B necessary in order to preserve the customary rates of progression for workers in the lower groups. The wage spread in Classifications 3-A and 4-A, however, is already so broad that we do not think an adjustment of maximum rates necessary in these cases.

It will be seen that this recommendation involves no changes in wage rates in any of the higher groups from 2-C up to 6, with the exception of the five-cent adjustment in minimum rates for Groups 3-A and 4-A. We are not convinced that bringing the lowest paid workers somewhat closer to those in the higher brackets will cause such serious hardship or discontent as to warrant an increase for the higher paid workers. If, however, the Board takes a different view on this point, we recommend that the tapering principle be applied and that increases for workers in the upper

brackets be not more than three cents per hour.

The increases recommended above would probably affect about half the workers in the bargaining unit and would amount to an average increase of about 2½ cents per hour or less than 4 per cent for the working force as a whole. It is not possible to be completely certain of how many workers would be affected because we do not know the exact distribution of workers within the wage brackets.

We also recommend that any increases which are approved by the Board be made retroactive to the date on which this case was certified to the Board, which was Dec. 17, 1943.

Signed by Lloyd G. Reynolds, representing the public; Francis A. Davis, representing employer; and Gilbert Lewis, representing labor.

GENERAL CHEMICAL CO.—

Decision of Regional Board IV (Atlanta)

In re GENERAL CHEMICAL COMPANY [Pulaski, Va.] *and* INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 119 (AFL), and INTERNATIONAL ASSOCIATION OF MACHINISTS, VICTORY LODGE 1649 (AFL). Case No. 111-15709-D, Aug. 2, 1945.

PREMIUM WAGE RATES—Shift premiums—Deduction of value of paid lunch period

Employees are entitled to shift differentials of four cents for second shift and six cents for third shift, less average value per hour of paid half-hour lunch periods granted by company. Dissenting labor members contend that Board exceeded its authority in injecting into dispute over shift premiums nondisputed issue of paid lunch period and that deduction of lunch period pay is unprecedented negation of shift-premium award.

For other rulings see Index-Digest 140.589 in this or other volumes.

Majority decision of Regional Board IV (Atlanta). Public members concurring: J. J. Scherer, Jr., and M. T. Van Hecke. Employer members concurring: F. A. Constangy and R. H. Witte. Labor members dissenting with opinion on Pars. 2 and 4(b): B. F. Gage and Curtis Sims.

Directive Order

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Pay for Holidays Not Worked

The union's request for pay for holidays not worked is hereby denied.

2. Night-Shift Differentials

Differentials of four cents and six cents per hour for the second and third shifts, respectively, shall be granted, less the average value per hour of the paid half-hour lunch periods for those on the second and third shifts.

3. Vacations

The standard vacation plan of 1 week's vacation after 1 year's service and 2 weeks' vacation after 5 years' service shall be granted, with pay to be computed at 2 per cent and 4 per cent respectively of the gross annual earnings during the preceding 12 months.

4. Wages and Classifications

(a) It was noted that the union, at the panel hearing, dropped the issue as to general wage increase.

(b) The issue of reclassification is not properly before the Board in this case.

5. Retroactivity

Wage adjustments ordered herein shall be retroactive to Apr. 23, 1945.

The procedure to be followed in making retroactive payment to employees who have quit or been discharged shall be in accordance with the National Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed

agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board or the Regional War Labor Board to make the remaining portions of the order immediately effective.

Dissenting Opinion of Labor Members

SHIFT DIFFERENTIALS

SIMS AND GAGE; Labor Members:—Differentials of four cents and six cents per hour for the second and third shifts, respectively, were awarded, *less the average value per hour of the paid half-hour lunch periods* for those on the second and third shifts.

We, the labor members, have purposely set out the above section of the directive order in the subject case in order that reference may be made to it and no trouble encountered in finding the exact language of the ruling. We have italicized the portion of the directive order that is objectionable, and to it we file this, our dissenting opinion. This particular clause has to do with shift differentials, and it is well that we pause long enough to study and read the rule and the reason as laid down by the National Board in one of the early cases that dealt with shift differentials. The able and learned public member, Dr. Frank Graham, in the Aluminum Company of America case [1 War Lab. Rep. 7] laid down to us the rule and gave to us the reason for the night-shift differential. Let us read what he in the early days of wage stabilization had to say. We quote:

"Nightwork tends to disrupt normal living and often results in irregular eating and sleeping habits. The "B" shift comes during the hours when family life is at its best. These are the hours when the children are home from school. These are the hours of the best social, athletic, recreational, and education programs. The 'C' shift comes during the hours when human beings have become accustomed to sleep by nature and nurture, by biological set and inheritance, and by social and personal habit. The worker during the night shifts has to sacrifice many of the values and satisfactions of social, family, and personal life."

This rule and reason is full of sound logic which was clearly determined in the early days of the War Labor Board. The rule and the reason up to this good hour has not been changed, and we still follow the reasoning as propounded by that able scholar Dr. Frank Graham.

In the subject case, it is notable that the question of lunch periods was not an issue before the panel, and no mention was made of it in the panel report. It is also noted that Conciliation Service did not certify to this Board the question of lunch periods. It was not a disputed issue. A careful survey of the file will find only one mention made of lunch periods, and that is to be found in the comments of the company on the panel report. This comment, of course, was irrelevant, immaterial, and had no probative value on the issues that were before the panel. We, the dissenters, are of the strong opinion that the Board went out of their way and were without authority to inject and consider an issue that was not properly before them. We can only assume that the comments of the company relative to lunch periods caught the eagle eye of the industry members of the Board and they immediately laid great stress upon it and found to them what they thought was a way to defeat the program and policy of the Board in applying night-shift differential. An application of this directive order would not only deny the workers a night-shift differential but, in theory, would take from them part of their hourly wage. Suppose we take just a simple example and apply this directive order that

effects shift differentials. Let us suppose that a worker [earns] a wage of $1.00 per hour, and he was employed on the second shift, we can further assume, in applying this directive, that the average value per hour of the lunch period for this worker based on 30 minutes would be 50¢. Under the directive, the worker would be entitled to 32 cents per hour for 8 hours as a shift differential. Subtracting the proposed shift differential of 32 cents from the average value of lunch period of 50 cents gives us the figure of 18 cents, which in matter of bookkeeping the worker would owe the employer. Now suppose we look at the third-shift differential of six cents per hour and use the same figures. We find that the worker would be entitled to 48 cents shift differential for 8 hours' work but would have it deducted from 50 cents as the average value of the lunch period, which on paper would leave the worker indebted to the employer in the amount of 2 cents. Surely this is not wage stabilization, and it does not follow out the ruling and reason as early laid down in the Aluminum Company case.

This type of directive order only tends to encourage the worker to stay away from the conference table and to shun signing a working agreement based upon peaceful negotiations. It is to be further noted that this particular pay for half an hour lunch periods was included in the written agreement negotiated between the parties in 1939 and has been repeated and renewed every year without change. Yes, for six long years this clause on lunch periods has been a part of the signed agreement between the parties.

Based on a finding of facts, the panel unanimously recommended a shift differential of three and five cents, and no mention was made of any deductions, conditions, or restrictions. This Board failed to carry out the recommendations of the panel but adopted the well established rule of four and six cents and tacked on the restriction, the deduction, and the condition that the average value per hour be deducted from the shift differential of four and six cents which in the long run means that on paper we say "Yes, you may have a four- and six-cent shift differential," but, by deductions and restrictions, you will not receive anything. Suppose we go back again and read the rule and reason as laid down by the able public member of the National Board, and we will not find any conditions, any deductions, or any limitations laid down that should be applied in the awarding of the night-shift differential. A careful survey of War Labor Board volumes fails to disclose any case where this particular type of ruling or reasoning has been applied.

We respectfully submit that the Board was without authority, and a decision of this kind does not settle labor disputes but tends to arouse the workers against further negotiations in a peaceful and orderly manner. No doubt, the industry members of the Board, who voted in this case, jumped on the company's comments like a duck on a June bug and felt that here at last is a way to defeat the well established night-shift differential. We submit that the decision should be reversed in the interest of labor relations, and, last but not least, the sound and adopted policy of the National War Labor Board of night-shift differential must stand or fall on its own merit and not be subject to injection of any limitations, deductions, or conditions. We trust that the National War Labor Board will, as early as possible, look at this case and, if we have found a new rule, that the workers be advised immediately.

CHAZY LIME AND STONE CO.—

Decision of Regional Board II (New York City)

In re CHAZY LIME AND STONE CO., INC. [Chazy, N. Y.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 648 (AFL). Case No. 111-14982-HO, Aug. 7, 1945.

UNION SHOP—Modification of clause in predecessor's contract

Union is entitled to union-shop clause contained in predecessor union's contract with modification to permit continued employment of prison parolees whom union has refused to admit to membership. Company's

contention that union shop will interfere with production because key employees would quit rather than join union and labor is scarce in area is rejected.

For other rulings see Index-Digest 195.703 and 195.710 in this or other volumes.

Majority decision of Regional Board II (New York) adopting recommendations of hearing officer. Public members concurring: Walter Gellhorn and Howard Lichtenstein. Labor members concurring: Peter K. Hawley and Frazer L. Holzlohner. Employer members dissenting on union-security award and night-shift differential for firemen: Daniel C. Williams and J. Copeland Gray.

Directive Order

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Union Security

The parties shall incorporate into their contract union-shop provisions, consistent with the degree of union security enjoyed by the predecessor union, with the following modifications:

(a) Workers may have 30 days to become members instead of 20 days.

(b) Granting of a union shop shall not cause the loss of employment of any present employees who are not eligible or who have not been admitted to membership in the union.

2. Wages

The company shall grant a four-cent per hour wage increase to all present employees and shall increase the present job rates by four cents.

3. Night-Shift Differential for Firemen

The company shall grant a night-shift differential of four cents per hour for work performed on the second shift and eight cents per hour for work performed on the third shift.

4. Retroactivity

Adjustments resulting from the provisions of this directive order shall be effective as of Jan. 1, 1945, unless the parties have agreed upon a later retroactive date. The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately operative.

Report and Recommendations of the Hearing Officer

May 10, 1945

BACKGROUND

The Chazy Lime & Stone Company produces lime and crushed stone in Chazy, N. Y. The company was purchased by the Plattsburg Coal Co. in December 1942. Since this purchase, the old hand equipment of the company has been reduced, and, in its place, there has been substituted mechanized equipment which the company intends to put into production by the end of the current month. This new equipment will make it possible for the company to produce twice as much with the same crew; it will also make possible the production of

agricultural lime stone from what was formerly waste material. The company is not engaged in direct war production.

The company now has a productive capacity of 120 tons per day; its present production is, however, between 30 and 40 tons per day. When the case was certified to the War Labor Board on Apr. 4, 1945, 18 employees were involved in the dispute. The number of men normally employed is between 22 and 24; approximately this number is now employed. Full production would require not more than 36 men.

While the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 648 (AFL), has been in existence since December 1942 or thereabouts, it was not designated as the sole bargaining agent for the men until Jan. 11, 1945, following an election held on Jan. 3, 1945, when, out of a total of 17 men eligible to vote, 13 voted in favor of this union, 1 voted against it, and 3 did not vote.

The last agreement between the workers and the company was dated May 15, 1943, and was between Quarry Workers Union No. 23015, representing the men, and George W. Ryan, for the Chazy Lime and Stone Company of Chazy, N. Y. This contract stipulated, among other things, that the contract was to become effective on May 15, 1943, and was "to continue from year to year unless either party notifies the other in writing 30 days before expiration of change or changes desired. * * * The contract stipulated relative to union membership as follows:

"1. Union Membership

"(a) The Employer agrees that he will not have in his employment anyone but members of Local Union No. 23015 in good standing. In event that the Union is unable to furnish additional or temporary help, the Employer reserves the right to hire workers from any other source. These workers, upon notification of the shop steward, must become members of Local Union No. 23015 within twenty (20) days from the date such notice is given.

"(b) The Union reserves the right to refuse to work with a nonunion man subject to Sec. (a) above."

After the election in January 1945, mentioned above, the case was referred to the Conciliation Division of the United States Department of Labor for mediation. In March 1945 a conciliator, John A. Rooney, arrived in Chazy, but no meeting of the minds could be secured between the company and the union on the issues of union shop or wages. The case was certified to the War Labor Board on Apr. 4, 1945, at the request of the company.

ISSUES

1. Union shop, and
2. Wages.

1. Union Shop

Union's Position

The union points out that the terms of the previous contract between the company and the Quarry Worker's Union, extending to May 15, 1944, and now under discussion, provided for a union shop. That contract did not provide for maintenance of membership and a 15-day escape clause; it provided the men with a union shop. The present union wants to retain the union-shop feature of the earlier contract. The fact that the men who work for the company decided in a legal election that they preferred to have the present union as their sole representative in collective bargaining with the company, instead of the old union, in no way decreases the right of the men to the union-shop provision of their earlier contract with the company. The union is not asking for a new right, in the present instance, but is asking for a continuation of an old right provided under the former contract between the company and its employees.

It has not been the policy of the National War Labor Board to deprive workers of rights which they have already gained through collective bargaining. The Bureau of National Affairs' book, entitled *Wartime Wage Control and Disputes Settlement* (Washington, D. C., 1945), says "The Board has never ordered the closed shop or union shop save by way of renewal of provisions previously agreed to by the employer and the union." (p. 302) The union's demand in this case is that a provision "previously agreed to by the employer and the union" be continued and that the union's rights be not decreased with respect to the right to a union shop already won by employees of the company.

The union has fulfilled its responsibilities. When the president of the company, early this year, urged substitution of maintenance of membership

with a 15-day escape clause instead of the union shop provided by the last contract, it would have been an easy matter to have pulled the men out on strike, but union officials insisted that work go on because work stoppage would have been contrary to the national interest. The union produced contracts with other local companies to show that the union shop was area practice.

The union refuses a maintenance-of-membership clause but is willing to allow new workers for the company 30 days, after notification by the shop steward, to become members of the union instead of the 20 days provided for by the former contract. The president of the company stated a month or so ago that he would accept the union shop if the war were over; the union calls attention to the fact that the war is now somewhat more over than it was then. To the company's objection to the union shop, on the ground that several of its most valuable men would quit rather than join a union, the union states a small minority should not be permitted to block the will of an overwhelming majority. The union is willing to permit the two parolees, now working for the company and not members of the union, to continue to work for the company, pending decision of the union's national officers whether these parolees may become members of the union.

If the company is able to break down the union shop in the plant in Chazy to protect a couple of parolees from State prison, such practice, if permitted, would break down union-shop practice in the entire area. There is at present no maintenance-of-membership clause in the area; there never has been any. And, although the Teamsters have union-shop provisions in their contracts throughout the area, they have not been a party to either strikes or walkouts.

Company's Position

In May 1944 a new contract was referred to the company which the company refused to sign; the Quarry Worker's Union was not heard from thereafter. The old contract originated in normal times and was all right then; at the present time it would seriously interfere with getting the men needed for full production. The company's plant has a capacity of 120 tons; at the present time labor conditions are such that the company is able to produce only 30 to 40 tons. Key men working for the company say definitely that they will not join the union. Maintenance of membership, with an escape clause, would take care of the matter for both sides and would be entirely fair to all parties, particularly in a time when labor is as scarce as at present. The labor supply in Chazy is decidedly limited; Chazy is a town of between 1,000 to 1,200 population, 14 miles from Plattsburg, and is from 75 per cent to 90 per cent agricultural. At the present time, the company needs 36 men but has been able to employ only 18 men.

The parolees employed by the company are technical men who would be hard to replace, and the union will not admit them to membership because they are parolees. The company doubts if 6 of the 13 men who signed blanks calling for the election to determine whether the present union should serve as the sole bargaining agent for the men are still in the employ of the company; it is certain that not more than 7 of the 13 are now employed by the company. It states further that only 5 of the 18 blanks, applying for membership in this union, bore authentic signatures.

To the union's statement that the union shop is area practice, the company says that such other contracts exhibited by the union are irrelevant. It is no business of the Government to step into matters of this kind. Such governmental regulation, through a union-shop contract, will interfere with production. The company will, on its own initiative, do as much for the men as the union. In normal times, the company would not be concerned about a union shop, but at the present time it is a matter of production. A union-shop contract provision would interfere with the company's production.

The present extreme shortage of manpower makes it necessary for the company to employ all the labor available and to make every effort to hold employees. The company feels that operation under union-shop provisions would make conditions even more difficult than at present, and, if conditions got worse, it would be necessary to close down its plant. Furthermore, as stated earlier, the company now has in its employ men who have stated that they would not join any union whatever. The company considers these men its most valuable employees and would not be able to operate efficiently without them. The company has offered

maintenance of membership to its employees, but they have refused it.

Discussion and Recommendations

In this case the union, having been designated as the sole bargaining agent of the employees of the company, is asking that the right to a union shop, provided in the last contract between the employees and the company, be included in the new contract. The company desires to discard the union-shop provision on the ground that this provision will handicap production and result in the loss of skilled workers who cannot or will not join the union. The company is willing to grant maintenance of membership with a 15-day escape clause. The union rejects this proposal. The union insists that, if the company succeeds in eliminating the union-shop provision from this contract, it would establish a precedent for breaking down the union-shop provision in other contracts within the area.

Since it is the established policy of the National War Labor Board not to permit either capital or labor to use the national emergency, unwittingly or otherwise, to advance their interests against either each other or the public interest, but to protect the rights of all, it seems clear that, in this case, the right of the union to a union shop should be continued. It is, therefore, recommended that the demand of the union for a union shop, as provided for in the former contract, should be granted.

2. Wages

Union's Position

The union is not asking for higher wages than those found in other plants but maintains that the wages paid by the company in the Chazy plant are too low. Both Plattsburg and Chazy are in the Geneva area, yet wages in Plattsburg and in the area generally were 50 cents per hour at the same time that they were only 45 cents per hour in Chazy. The Little Steel formula has been exceeded in the case of substandard wages; present wages paid by the company are lower than those paid generally by plants in the area.

The union asserts that the starting rate for general labor in Plattsburg is 60 cents per hour; this is not the case in Chazy, and the company knows it. The minimum rate at Berst, Foster, Dicksfield Co. is 64 cents, at Imperial Wall 79 cents, and at the Pulp Mill 69 cents. Wages have not been increased 15 per cent over what they were on Jan. 1, 1941, at the Chazy plant of the company.

The union wants a general increase of 20 cents per hour. It asks that the four firemen who work 12-hour night shifts alternate weeks receive a differential pay allowance for working on that shift.

Company's Position

The company states that, while its base rate of pay in December 1942 was 45 cents per hour, its present base rate of pay is 56 cents per hour—a 25 per cent increase. Moreover, its workers work a 54-hour week, and their take-home pay is much larger than before the war. Workers in the Chazy plant working 54 hours per week are better off at 56 cents per hour than if they were working for the Plattsburg companies mentioned by the union, which, although paying more per hour, provide only 40 hours' work per week. The companies which pay more than a 56-cent per hour base pay have only a 40-hour week.

In answer to the union's assertion that the minimum pay at Berst, Foster, Dicksfield Co. was 64 cents per hour, Mr. Ryan called the company on the telephone and ascertained that its base pay was 50 cents for women and 60 cents for men. The company stated that, while it would like to pay higher wages, it could not do so as long as there was not sufficient money on hand. The company said that it would increase pay later if its income increases. When the company earns more money, it will increase wages and will do so without the intercession of the union or anyone else. Moreover, under the new plan of operation which goes into effect the latter part of this month, there will be more men in higher wage classifications than under the present plan of operation.

Discussion and Recommendations

While the wages paid by the company are not high, they are above the rate of 55 cents per hour which the Board has defined as substandard. The wage increases granted by the company have more than met the requirements of the Little Steel formula Therefore, it is recommended that the union's demand for a 20-cent per hour general wage increase be denied. However, it is recommended that workers on the 12-hour night shift, such as the 4 fire-

men, 2 of whom each work a 12-hour night shift, alternating every week with the other two, be granted a shift differential of 6 cents to 8 cents per hour for work on the night shifts, as recently allowed by the Board in similar instances. It is recommended that such differentials be retroactive to May 15, 1944.

SUMMARY OF RECOMMENDATIONS

1. Granting the union's demand for a union shop.

2. Denial of the union's demand for a 20-cent per hour general wage increase.

3. Granting the union's demand for a shift differential for men working on the 12-hour night shift, retroactive to May 15, 1944.

Signed by William Gellermann, hearing officer for the Board.

BUCKEYE FORGE CO.—

Decision of Regional Board V (Cleveland)

In re BUCKEYE FORGE COMPANY [Cleveland, Ohio] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 3362 (CIO). Case No. 111-11899 [5-D-1217], Aug. 6, 1945.

UNION SHOP—CHECK-OFF—Clauses contained in predecessor's contract

Union is entitled to union-shop clause where such clause was contained in company's contract with predecessor independent union. Employees not accepted for union membership or suspended by union for violation of constitution should be discharged, provided that they may later be reinstated without accumulated seniority if company and union so agree.

For other rulings see Index-Digest 195.703 and 172.245 in this or other volumes.

Majority decision of Regional Board V (Cleveland) affirming recommendations of panel. Public members concurring: Frederick H. Bullen, A. C. Herold, and Harry J. Dworkin. Employer members dissenting on Par. 1: Rudolf Homan, Lyold J. Haney, and Theodore H. Doan. Labor members dissenting on Par. 2: Elmer Cope, J. W. Childs, and John F. Schmid.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Union Shop and Check-Off

"A. All employees now members of the Union shall remain members, and those not now members of the Union shall, within thirty (30) days from the date of this order, become and remain members of the Union, in good standing, in accordance with the by-laws and constitution of the Union, as a condition of employment, during the life of this agreement.

"B. Any employee not accepted for membership by the Union or suspended by the Union for violation of Arts. 11 and 12 of the constitution of the Union, on written request of the Union or notice by the Company shall be discharged. Any employee discharged under such circumstances may later be reinstated, if the Company and the Union mutually agree to such reinstatement. Any such discharge shall be a discharge for good cause, and such employee shall forfeit all his seniority.

"C. Nothing in this section shall prohibit the Company from employing anyone it sees fit, providing such employment does not violate the provision of this agreement.

"D. The Company, for all employees, shall deduct from the first pay of each month the union dues for the preceding month of $1.00 and promptly remit the same to the international secretary-treasurer of the Union. The monthly dues of $1.00 may be increased to an amount not to exceed $1.50 in accordance with the provision of the constitution of the international Union. Upon receipt of notification to this effect from the international secretary-treasurer of the Union, the Company shall deduct from the pay of the applicable employees

such larger amount and remit the same to the international secretary-treasurer of the Union. The initiation fee of the Union of $3.00 shall be deducted by the Company and remitted to the international secretary-treasurer of the Union in the same manner as dues collections. Such authorizations shall be binding during the life of this agreement.

"The Board's action in granting union-shop provisions is based on the fact that such provisions existed in the previous contract."

2. Sick Leave

The union's request for a sick leave plan is denied. The Board will approve, under the wage stabilization program, reasonable sick leave plans agreed to by the company and the union.

3. Computation of Vacation Pay

Vacation pay shall be computed at the employee's straight-time average hourly earnings in accordance with the vacation plan approved in Docket No. 5-36768.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Report and Recommendations of the Panel

PARTIES

Company

The Buckeye Forging Co. is a corporation with its plant and offices at 10003 Harvard Avenue, Cleveland, Ohio. It is engaged in the manufacture of drop forgings for tractors and machine parts which is practically 100 per cent in the war effort.

The company employs about 185 workers, of whom 135 are involved in this case.

The Independent Die Sinkers Union holds a separate contract with the company.

Union

The union involved is Local 3362, United Steelworkers of America (CIO). It became the sole bargaining agent for all production and maintenance employees, except die sinkers, by virtue of an election held on June 9, 1944. It was so certified on June 14, 1944, thereby succeeding the Cleveland Independent Union, which was the prior bargaining agent by contract with the company.

Labor relations have been harmonious to date with no work stoppages.

HISTORY

The first agreement between the parties was signed on Nov. 13, 1944, which agreement, however, left twelve (12) unresolved items. After a federal conciliator had failed to produce an accord, these issues were certified to the National War Labor Board on Nov. 1, 1944, which certified the case to the Fifth Regional Board, and a hearing was set for Feb. 1, 1945. At the request of the union, the case was referred back to the parties for further negotiations. Such proceedings were had that the patries, by mutual agreement, resolved all issues except the four involved in the instant matter. This settlement is evidenced by an amendment to the contract dated Apr. 5, 1945.

HEARING

An informal hearing was held at Parlor "H," Hollenden Hotel, Cleveland, Ohio, on May 3, 1945, at 10:00 a.m., at which all interested parties were given an opportunity to hear, be heard, and give evidence in support of their respective positions; also to question and discuss oral testimony as well as information submitted in briefs.

The parties were present on time, and the hearing proceeded smoothly with courtesy and consideration on both sides. The panel started its deliberations immediately after the close of the hearing.

ISSUES

The issues submitted by the parties and certified as being disputed were:

1. Union recognition—check-off,
2. Union shop,
3. Sick leave, and
4. Vacations.

1. Recognition—Check-Off

Union recognition is accorded in the contract of Nov. 13, 1944, and the disputed item was the check-off of dues and assesssments.

The union requests that the standard check-off clause of United Steelworkers of America be included in its contract with the employer.

It urged that it is a responsible organization exercising discipline over its members and that a check-off was essential for its own stability and the promotion of the war effort by stable labor relations; the company will benefit by this provision also.

The company contended that membership in a union should be voluntary; that it has never opposed the organization of its plant in any manner; but that the collection of dues and assessments is a purely union obligation which the employer should not be made to assume. The check-off would impose an additional amount of record keeping upon an office staff already overburdened with a vast amount of paper work required by government agencies.

The panel was of the unanimous opinion that the request for a check-off should be granted and so recommends. During the course of the proceedings, it was brought out the company had a labor agreement with the Cleveland Independent Union in 1942 which included a check-off of membership dues. This independent union originated as a mutual benefit association among the employees 10 or 12 years ago with a custom of deducting dues dating from 1936, but, after the enactment of the Wagner Act, it was undoubtedly transformed into a labor union and was so recognized by the NLRB in the election to determine the bargaining agent. This, to the panel, established a custom or usage in employer-employee relations which should not now be disturbed, and, since Local 3362 had won the bargaining election in a contest with the independent union, Local 3362 was entitled to inherit the practice held by its predecessor.

2. Union Shop

The union urged that workers at the plant should not be permitted to receive benefits obtained by union efforts unless they contributed to the cost thereof. Also, the union was without power to discipline nonmembers who violated the no-strike pledge or other obligations assumed by the union in its contract.

The employer contended that no worker should be required to join any union other than by his voluntary act; that the employer should not be compelled to coerce him in this regard; that the request for a union shop was an interference with individual liberty and in direct contravention of the Bill of Rights.

The panel was of the unanimous opinion that this request should be granted and so recommends.

It again appeared that the company's contract with the Cleveland Independent Union had a provision limiting its employees to members of that union, and hence, a custom had been established which should not be ordered changed.

3. Sick Leave

The union's position was that this was an extra hazardous industry; that accidents were frequent; also deafness and heat prostrations. It was further urged that, because of the perspiration induced by the intense heat, employees were easily susceptible to disabling colds and pulmonary diseases which should be compensated by paid time off for two weeks' illness resulting from the employment.

The employer contended that sick leave with pay was not an area practice in the industry; that it would impose an unjust financial burden on it which was not imposed upon its competitors; that the provision requested was subject to great abuse; further, that it contributed to the Industrial Commission of Ohio a payroll tax to cover this item.

The panel was of the unanimous opinion that this request should be denied and so recommends.

It appeared that the company did carry a group insurance policy which covered all of its employees and which afforded a measure of relief; also state industrial compensation could be invoked. It was evident that there was no area or industry practice to justify this request.

4. Vacations

This request is limited to the pay base for vacations since the contract already approved by the parties provides for a one-week and two-week vacation with pay after one and three years' employment respectively.

The union asks for vacation pay based on the average hours worked during the period used as a basis for the computation even though the average hours may be in excess of the minimum established for all employ-

ees. It is urged that this demand is in conformity with the directive now in force in the steel industry [19 War Lab. Rep. 568].

The company urged in reply that the vacation plan offered and which appears in its brief, to which reference is made, is just and reasonable and is in accord with general industry practice.

The panel was of the unanimous opinion that this request be denied and so recommends.

This plant operates on a 48-hour workweek with time and a half for the excess over 40 hours. The actual workweek is 58 hours. The panel feels vacation pay should be based on straight-time average hourly earnings with a 40-hour minimum and a 48-hour maximum workweek, this being in accord with the precedents established in a large majority of cases determined by the WLB which were called to the attention of the panel.

RECOMMENDATIONS

1. The panel recommends that the Regional War Labor Board direct the parties to include in the contract a provision granting a check-off of union dues and assessments as requested.

2. The panel recommends that the Regional War Labor Board direct the parties to include in the contract a provision for a union shop.

3. The panel recommends that the Regional War Labor Board deny the provision requesting sick leave with pay.

4. The panel recommends that the Regional War Labor Board direct the parties to include in the contract a provision for vacation pay based on straight-time average hourly earnings with a minimum 40-hour and a maximum 48-hour workweek and that the union request for a vacation pay basis be denied.

All recommendations are unanimous.

Signed by Harry E. Davis, representing the public; Howard C. Barbour, representing employers; and Russel N. Chase, representing labor.

NINETEEN HUNDRED CORP.—

Decision of Regional Board XI (Detroit)

In re NINETEEN HUNDRED CORPORATION [St. Joseph, Mich.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, OFFICE WORKERS UNIT, LOCAL 931 (CIO). Case No. 111-15014-D, Aug. 6, 1945.

WAGE ADJUSTMENTS — Length-of-service and merit increase system —Retroactive date of wage increases — Beginning of negotiations

Employees are entitled to automatic progression to mid-point of respective rate ranges within period of not less than four months for unskilled jobs, six months for semi-skilled jobs, and eight months for skilled jobs and to merit increases thereafter, each employee being judged against objective standards of performance which parties may negotiate or company should make known to union.

Awarded wage adjustments would be retroactive to date of commencement of negotiations on wages rather than to earlier date of expiration of prior contract or later date of certification of dispute where (1) negotiations on wages were not undertaken until several months after signing of current contract, which contained no provision as to retroactivity, and (2) conciliator delayed in referring dispute to WLB.

For other rulings see Index-Digest 225.630, 225.640, and 225.396 in this or other volumes.

Majority decision of Regional Board XI (Detroit) amending recommendations of panel. Public members concurring: Louis C. Miriani and Herman J. Wyngarden. Labor members dissenting on Par. 1: Morris Field and Earl L. Smith. Employer members dissenting on Pars. 2, 3, 4, and 5: John L. Lovett and Clifford G. Hale.

Directive Order

I. The Regional War Labor Board for the Eleventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive

Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. The following rate ranges shall be established for office job classifications:

Grade	Rate Range (Per Week)
I	$20-$25
II	21- 27
III	23- 29
IV	26- 33
V	30- 38
VI	34- 44
VII	38- 48

2. If experienced, the employee shall receive the minium of the rate range for his classification.

If the employee is inexperienced, he shall receive $2.00 per week below the minimum of his classification, with automatic progression to the minimum rate 30 days thereafter.

3. The employees shall receive automatic progression from the minimum to the mid-point of the respective rate range.

The parties are to negotiate a time basis for the said increases within the principles of the resolution on automatic progressions, adopted by National War Labor Board on Sept. 21, 1944 [18 War Lab. Rep. X; WCDS 351], six months for semi-skilled jobs, and eight months for skilled jobs.

4. Wage increases from the mid-point to the maximum of the applicable rate range shall be on a merit basis.

The company shall make known to the union the objective standards of performance for a merit increase which the employees in the various classifications must meet as a condition of their being advanced within the applicable rate range. The parties may negotiate the objective standards of performance.

5. Once the merit plan is established, the company shall apply the standards of the plan.

Any complaints as to company action may be processed through the contract grievance procedure.

Following a review, each employee involved and the union shall be notified of the merit increases awarded. The employee involved and the union shall be entitled to know the reasons for the granting or denial of merit increases.

6. Employees on the payroll as of the date of this directive order shall not have their rate reduced as a result of the establishment of rate ranges in this order.

7. Increases resulting from Pars. 1, 2, and 3 shall be made effective as of Jan. 25, 1945.

Any employee whose service with the company has terminated since Jan. 25, 1945, shall be entitled to retroactive pay in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

V. In accordance with the provisions of the directives of Mar. 8 and Apr. 24 of the Economic Stabilization Director, the wage rate provisions of this directive order shall become effective only after approval of the Director of Economic Stabilization.

Report and Recommendations of the Panel

ISSUES

1. Establishment of rate ranges for office job classifications.
2. Setting an effective date for changes in rate ranges for office job classifications.

BACKGROUND

The company manufactures, in time of peace, washing machines and ironers for domestic use. It is currently engaged in the manufacture of gun mounts, airplane controls, carburetor parts, and fragmentation bombs and other devices and related war products, being engaged in war work to the extent of approximately ninety-five (95) per cent. There are approximately ninety-two (92) employees out of a total of thirteen hundred (1,300) employed who are concerned in this dispute, all of whom are members of the union involved in this case and which union is composed solely of office and clerical employees.

The company's office employees were organized into a union in the spring of 1944. The question of majority representation was determined by a consent election held by the National Labor Relations Board on May 24, 1944, which resulted favorably to the union. There has been no work stoppage since then either in the form of strikes or lockouts, and relations have been amicable.

On June 20, 1944, the union presented its proposed contract to the company. Following negotiations, the contract was signed within a few days of the effective date referred to, namely Oct. 1, 1944. At that time all issues in dispute were decided except the two now before this Board.

The contract contained a provision known as Art. 6, which is as follows:

"Art. 6, Wages, Sec. 1.

"The Company and the Union agrees to the wage range and job classification and the classification and wages of each employee shown on schedule attached hereto and marked Schedule "B" and made a part thereof subject to approval of National War Labor Board or such other appropriate governmental agencies that may have jurisdiction thereof."

No schedule was agreed upon or attached at any time.

It was agreed at the time of the contract between the parties to wait for the metal trades survey, which was not presented at that time, to be completed before rates were set. This survey was received by the company late in December, and the company then proceeded to check the survey and to make an offer to the union of rates based on that survey. On Jan. 25, 1945, the company gave to the union for the first time a schedule of rates based on the metal trades survey. There is no claim that the company was unduly negligent in not having made this offer before this time. Negotiations started at that time, and the company withdrew the rates which had been offered. The negotiations continued to Mar. 7, 1945, when a conciliator was called in. On Mar. 8, 1945, the stipulations as to the issues now before this Board were entered into and negotiations were terminated. The issue was certified on Apr. 6, 1945.

The national metal trades survey has been adopted and consented to by both parties. Under that survey jobs have been evaluated according to the various elements therein stated and in accordance with the total number of points for each job. There have been created seven (7) labor grades. These labor grades and job descriptions have been mutually agreed upon so that the only question is as to the rate ranges to be applied to each grade.

DISCUSSION OF ISSUES

1. Establishment of Rate Ranges for Office Job Classification

Company's Position

The company contends that the increase asked for by the union would amount to a general wage increase of between 15 and 20 per cent and cites NWLB order of Mar. 8, 1945 [22 War Lab. Rep., No. 2 XXIII; WCDS 537], amended Apr. 24, 1945 [23 War Lab. Rep., No. 4, V], relating to general increases.

The company further contends that the union's proposed wage rates would result in further intra-plant inequities inasmuch as it would leave the lower rated employees in substantially the same relative position as they are at the present time.

The company admits that there now are intra-plant inequities particularly as concerns the lower labor grades.

Union's Position

The union contends that the minimum rate, which is now 50 cents per hour, is substandard and that the minimum wage for the lowest grades should be at the rate of 55 cents per hour. It shows that the majority of

employees in this rate are young girls who are unable to live on $20.00 a week in this area.

As to the other increases requested by the union, its position is that they would more nearly adjust intra-plant inequities.

Findings and Recommendations

A schedule is attached [following panel recommendations] showing as to each grade the present rate, the WLB stabilization rate, the company's weighted average, the WLB weighted average, the company's offer, the panel recommendations, and the union's offer.

To ascertain the War Labor Board stabilized rate, the panel examined the schedule of stabilized wage rates in the Benton Harbor-St. Joseph area as to each classification. In these classifications where there have been no stabilized wage rates for this area, the panel has determined them by interpolating the Kalamazoo rates. It is found that, on an average for all classifications listed, the Kalamazoo rates were $1.25 per week more than the St. Joseph Rates and has therefore reduced the Kalamazoo rates by $1.25 in each instance where there were rates for Kalamazoo area but not for St. Joseph. In Grades VI and VII, there are no WLB stabilization rates available for any area, and therefore the panel has determined the rates from interpolation of the balance of the structure of Grades I through V.

As to the minimum rate now paid by the company, which is $20.00 per week, it is the findings of the panel that this is substandard and that the minimum should be based upon an hourly wage of 55 cents per hour, or $22.00 per week, as that would be the weighted average as to Grade I. The panel recommends that the company's offer be accepted and ordered by the War Labor Board.

As to Grade II, the panel finds that the War Labor Board weighted average of $23.00 is approximately midway in the company's offer and that the union's offer would be in excess of the War Labor Board weighted average. Further, the panel finds that the increase over Grade I of $1.00 at the minimum and $2.00 at the maximum is proper and justifiable. The panel therefore recommends that the company's offer be accepted and ordered.

As to Grade III, the panel finds that the War Labor Board weighted average of $23.96 is approximately $1.00 above the company's minimum offer and $1.00 below the union's minimum order; that, therefore, the union's offer cannot be accepted as it would be in violation of the principal of wage stabilization. The panel finds that, inasmuch as the company's offer is $2.00 over the amount set for Grade II, both as to minimum and maximum, which amount is a fair increase over Grade II, the company's offer is accepted.

As to Grade IV, the panel finds that the company's offer is $3.00 more at the minimum and $4.00 more at the maximum than Grade III and that the minimum is approximately $1.00 more than the WLB weighted average. The union's offer is approximately the same as the WLB weighted average. The panel therefore recommends that the company's offer shall be accepted.

As to Grade V, the panel finds that the WLB weighted average is $1.00 more than the minimum of the company's offer and is $1.00 less than the union's offer. The company's offer is $4.00 at the minimum and $5.00 at the maximum more than the rate set for Grade IV and is commensurate with the increased value of the services of Grade IV. The panel, therefore, recommends that the company's offer shall be accepted.

As to Grade VI, the panel finds that the WLB weighted average of $37.90 is approximately $1.00 less than the mid-point of the company's offer and $1.00 more than the minimum of the union's offer. The company's offer is $4.00 more than the minimum on Grade V and $6.00 more than the maximum of Grade V. The panel finds that this is a proper range in order to prevent intra-plant inequities and, therefore, recommends that the company's offer be accepted.

As to Grade VII, the panel finds that the WLB weighted average of $43.50 is 50 cents more than the mid-point of the company's offer and $1.50 more than the minimum of the union's offer. The company's offer is $4.00 more than the rate set for Grade VI, and, therefore, to prevent intra-plant inequities, the panel recommends that the company's offer be accepted.

It should be noted that the company has agreed that, in any instance where an employee is at present receiving more than the maximum rate set for his job, such employee will not be asked to accept a decrease, but

his wages shall remain as they now are. The panel recommends that this be ordered.

It should also be noted that the panel, in each instance, has accepted the company's proposed rate range in opposition to that of the union's proposed rate range and that the panel has found, as a matter of fact, that the rate range as proposed by the company is designed to correct any intra-plant inequities which now exist and is acceptable under wage stabilization.

Automatic Increases—The union has further asked in its brief that the Board direct automatic increases to the mid-point of the rate range. The company's plan as to merit increases is that the employee comes in at $2.00 below the minimum and is raised to the minimum 60 days thereafter. His progress thereafter is by merit but not more than ten per cent in any six-month period. If the employee feels that he is entitled to a raise which he has not been granted, he can use the grievance proceedings. This is not a part of the stipulation, but the panel has heard the parties on this point and recommends that the Board order an automatic progression to the mid-point of the rate range on a time basis to be mutually agreed upon and be reviewed at such times as shall be mutually agreed upon. The parties shall agree on objective criteria for merit increases after the mid-point of the rate range. If the parties cannot agree upon these points, then it is recommended that the subject shall be reviewed by the War Labor Board.

2. Setting Effective Date for Changes in Rate Ranges

Company's Position

The company contends that nothing was ever said by the union as to the date that it demanded retroactivity until Jan. 25, 1945, at which time the company first heard of the union's demand. The company further contends that the usual date set by the War Labor Board is the date of certification if no agreement has been had on the point. On Jan. 25, 1945, the company submitted their rates to the union, and the company states that, if the union had accepted these rates at that time, it would have put them into effect immediately.

Union's Position

The union contends that, when the contract was first signed, namely Oct. 1, 1944, it had in mind that there would be a salary increase and that the main purpose of the contract was to effectuate that salary increase. That, inasmuch as it was impossible to set rates at that time by reason of the fact that the metal trades survey had not been completed, the union sought to protect itself by placing in the contract Art. 6, which is cited in full above.

Findings and Recommendations

The panel finds that, at the date the contract was entered into, the company did not agree to make any increase in wages retroactive and that Art. 6 of the contract is so vague as to be meaningless. It is to be noted that this article provides for a schedule attached and that no such schedule was ever attached or agreed upon. The panel, therefore, finds that there was no date agreed upon for retroactivity.

The panel further finds that negotiations were commenced on Jan. 25, 1945, as to wage increases and that the company was willing at that time to grant wage increases and to make them effective as of that time. These negotiations continued until Mar. 8, 1945, at which time the conciliator was given a stipulation as to the issues in dispute. The conciliator made no certification until Apr. 6, 1945, during which time there were no negotiations whatsoever. The panel feels that to set the date of certification as a date for retroactivity in this case would be manifestly unfair to the employees inasmuch as both they and the company were agreed that there would be some wage increase and, furthermore, that the conciliator took approximately a month to certify during which time no negotiations were had. The panel therefore rejects the date of certification as the date of retroactivity.

Inasmuch as these two dates are rejected, the panel feels that the date upon which the wage increases should be retroactive should be the first pay date after Jan. 25, 1945, being the date upon which the company and the union commenced negotiations to determine how much the rate ranges should be increased, and the panel therefore recommends this date to the Board.

Signed by Felix F. Silver, representing the public; Edmund Gale, representing labor; and George D. Branston, representing employers.

Schedule

Classification	Present Rate	WLB Stabilized Rate	No. of Employees	Weighted Ave. Co. WLB		Offer Co. Union		Panel Recom.
Grade I				$19.50	$22.00	$20.-25	$21.-27	$20.25
Office Boy	$19.00-22.00	$20.00	1					
Order Clerk	20.00-26.50	20.00						
File Clerk B	20.00-26.50	20.00						
Grade II					22.25	23.07	21.-27	23.-29
Bookkeeper B ...	20.00-26.50	28.00	1					
Typist B	20.00-26.50	20.00	1					21.-27
File Clerk B	20.00-26.50	20.00	2					
General Clerk B	20.00-26.50	22.75	2					
Blue Print	20.00-26.50	20.00						
Grade III					22.59	23.96	23.-29	25.-31
Bookkeeper B ...	20.00-26.50	28.00						23.-29
Clerical Acct. Clerk B	20.00-26.50	20.00						
Bookkeeper Mach. B	20.00-26.50	24.00						
Payroll Clerk A..	20.00-26.50	26.00						
Payroll Clerk B..	20.00-26.50	24.00	2					
Order Clerk B ..	20.00-26.50	20.00						
Steno B	20.00-26.50	24.00						
File Clerk B	20.00-26.50	20.00						
File Clerk A	26.00-34.50	24.00						
Typist A	20.00-26.50	24.00						
Steno A	20.00-26.50	28.00						
Receptionist	20.00-26.50	24.00						
Order Clerk B ..	20.00-26.50	20.00	2					
Steno B	20.00-26.50	24.00						
Typist B	20.00-26.50	20.00	2					
Steno B	20.00-26.50	24.00						
General Clerk B..	20.00-26.50	22.75						
General Clerk B..	20.00-26.50	22.75	2					
Key Punch B	20.00-26.50	20.00	1					
Steno B	20.00-26.50	24.00						
Typist B	20.00-26.50	20.00						
General Clerk A..	20.00-26.50	26.75	3					
General Clerk A..	20.00-26.50	26.75						
Grade IV					26.53	27.03	26.-33	27.-33
General Clerk A..	20.00-26.50	26.75						26.-33
Tabulating A	26.00-29.00	26.00						
Payroll Clerk A..	27.50-30.00	26.00						
Steno A	20.00-26.50	28.00	3					
General Clerk A..	20.00-26.50	26.75						
Steno B	20.00-26.50	24.00						
Typist A	20.00-26.50	24.00						
Typist B	20.00-26.50	20.00						
Receptionist	20.00-26.50	24.00						
Tool Design	23.00-35.00	35.00						

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Classification	Present Rate	WLB Stabilized Rate	No. of Employees	Weighted Ave. Co. WLB	Offer Co.	Offer Union	Panel Recom.
Grade V				32.50	31.00	30.-38	32.-42
Secretary B		30.00					30.-38
Sup. Clerk	34.00-40.50	35.00					
Ass't. Nurse	21.00-28.00	28.00					
Grade VI				42.50	37.90	34.-44	37.-48
Planning	35.00-46.00	41.00					34.-44
Draftsman	35.00-46.00	35.00					
Time Study	35.00-46.00	43.00					
Supervisor	30.00-40.00	35.00					
Tab. Ass't.	30.00-40.00	35.00					
Expediter	35.00-46.00	35.00					
Priority Clerk ...	35.00-46.00	38.00					
Grade VII				43.25	43.50	38.-48	42.-53
Chief Expediter..	35.00-46.00	41.00					38.-48
Planning	35.00-46.00	46.00					

ASSOCIATED DAIRY PRODUCTS—

Decision of Regional Board X (San Francisco)

In re ASSOCIATED DAIRY PRODUCTS, CENTRAL AVENUE DAIRY, *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 274 (AFL). Case No. 111-15884 (10-D-958), July 13, 1945.

UNION SHOP—Continuation of dead letter clause

Union is entitled to continuation of union-shop clause contained in expired contract pending settlement of new contract terms. Dissenting industry members contend that clause had become dead letter in old agreement and its vitalization now will place company in position where it must choose between forcing present employees to join union, replacing entire staff, or closing down operations.

For other rulings see Index-Digest 195.701 in this or other volumes.

Majority decision of Regional Board X (San Francisco). Public members concurring: Arthur P. Allen, James C. Hill, William S. Hopkins, and Willard R. Hotchkiss. Labor members concurring: Harry Lea, Wendell Phillips, Ed Hall, and Herbert Wilson. Employer members dissenting with opinion: Paul Shoup, Fred L. Annable, John J. Thomas, and Carl A. Johnson.

Interim Directive Order

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby orders as follows:

The terms and conditions of the collective bargaining agreement between the parties which expired by its own terms Apr. 30, 1945, shall be maintained and continued in effect pending the settlement of the existing disputes

through collective bargaining, arbitration, or directive order of the National War Labor Board.

II. Either party may, within fourteen (14) days from the date of issuance hereof, file a petition for National Board review of this order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures." The filing of such a petition for review shall not stay or suspend the operation of this order, which shall take effect immediately upon issuance.

Dissenting Opinion of Employer Members

Aug, 7, 1945

ANNABLE, THOMAS, SHOUP, and HALL; Employer Members:—The Associated Dairy Products Company in Arizona supplies dairy products to the people of the Salt River Valley. It has heretofore had a contract with the International Brotherhood of Teamsters, Chauffeurs, and Helpers, Local 274. This contract was a union-shop agreement, accepted by the employer for himself and his employees as a matter of expediency (all employees, old and new, had to join within a limited time). His view that it did not represent the wishes of himself or his employees is borne out by the subsequent events. The employees disregarded the union affiliation. The record shows that the union itself was unable to furnish the company with employees, cannot do so now, and will not take on any obligation with respect to the future. With these facts before them, a division of the Board considering the dispute, June 9, [at] Phoenix, Ariz., adopted the following order, labor dissenting:

"It is ordered that the terms of the contract expiring Apr. 30, 1945, be continued in effect until a new contract is reached between the parties, provided, that, if, after 30 days, the employers satisfy the Board that they have made a bona fide effort to comply with the provisions of the contract regarding labor and are unable to secure sufficient of such labor to properly operate their plant, they may apply to the Board for a modification of such interim order."

This order was appealed to the Tenth Regional Board in session in Los Angeles July 12 and the order of the division reversed by a 12-man Board, industry dissenting, thus making it necessary for the Associated Dairy Products Company to do one of three things:

(1) Force all its present employees to join the union.

(2) Discharge the present employees and engage others who will join the union, the union being without any obligation to assist in finding such employees.

(3) Close down.

This decision of our Board is an errant trespass on the rights of employees and employer. It attempts to vitalize an agreement that has expired and with respect to an empty section that was not given substance. This order deliberately ignores the facts that control the situation. In my judgment, it violates the Presidents' statement of Nov. 14, 1941, that the power of the Executive would never be used and that Congress would not pass a law to compel any employee to join a union against his will. This compulsion our Board now orders. No matter what rights the union had under this agreement, which expired by definite limitation, the agreement had no existence because of that limitation and because, long before, such rights had lapsed because of union laches. The union has now successfully made the effort, so far as the Tenth Regional Board is concerned, to use that Board as an agent to enforce a union shop under a dead agreement when, during the lifetime of that agreement, no evidence was revealed by Judge Lockwood's clear presentation in behalf of the division's order that it had made any real effort to secure membership of all employees.

The industry members believe that the Tenth Regional Board is off its beam. It should accept the demonstrated facts and move up the beach, like King Canute, lest it likewise get its feet wet up to the back of its ears, already by some of its critics said to be none too dry. The unmilked cow, representative of an activity that has done more in behalf of the war effort than all the civilian war agencies put together, may moo her distress; token butter may disappear from the breakfast plate of Arizona, the land of the free and home of the brave; the little children go supperless to bed; but the union must be and shall be preserved, let the gyps fall where they may—that is, the labor union.

There is no evidence whatever that the war effort will be impeded by maintaining the Associated Dairy Products Company as a useful activity under the condition existing during the last 15 months, with re-

spect to the lack of a closed shop. Therefore the industry members hope that, upon appeal of the Associated Dairy Products Company, the National Board will recognize the right of that company to stay in business; the right of the cow to be milked; the right of a child to its bread and milk; the necessity of maintaining butter on the breakfast tables as superior to the rights of the union to collect tribute from unwilling employees; this conclusion to be reached on the foundation of the factual statement so clearly set forth by Judge Alfred C. Lockwood (public member) but not heeded by the majority of the Tenth Regional War Labor Board.

SEFTON FIBRE CAN CO.—

Decision of Regional Board IV (Atlanta)

In re SEFTON FIBRE CAN COMPANY, ORDNANCE MANAGEMENT DIVISION [Memphis, Tenn.] *and* UNITED RUBBER WORKERS OF AMERICA, LOCAL 239 (CIO). Case No. 111-15699-HO, July 18, 1945.

CHECK-OFF—Compulsory check-off

Board denies company's request that automatic check-off, if ordered, include 15-day escape period, despite fact that negotiated maintenance-of-membership provision contains no escape clause. Hearing officer found that (1) number of cases in which National Board has required escape clause in check-off provision is small relative to number in which no escape clause has been granted and that (2) escape period would provide advantage to union members only by giving them option of paying union dues in person since dues payment is necessitated by maintenance of membership.

For other rulings see Index-Digest 20.325 in this or other volumes.

Majority decision of Regional Board IV (Atlanta) amending prior order. Public members concurring: William M. Hepburn and Harry D. Wolf. Employer members dissenting on Par. 1: Frank A. Costangy and R. F. Howell. Labor members dissenting on Par. 2: C. B. Gramling and H. S. Williams.

Directive Order

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Check-Off

(a) The automatic check-off of union dues and initiation fees is ordered as follows:

The company shall, during the life of the agreement between the parties, deduct once a month from the pay of each of its employees who is a member of the union his present union dues and shall promptly remit the same to the treasurer of the union. The union's present initiation fee shall also be deducted by the company from the pay of new members of the union and said fee shall likewise be remitted to the treasurer of the union.

(b) The company's request for an escape period in the check-off clause as well as its request to withdraw the use of office space by the union is hereby denied.

2. Wages

(a) The following range shall be established for the classifications listed below:

Classification	Rate	Range
Machine Apprentice "A"	$.80	$1.10
Winder Oper.	.85	1.00
Inspector	.80	1.00
Paper Slitter	.85	1.00
Set-up Man	.80	1.00
Tin Slitter	.75	.90
Saw Filer	.80	.90
March. Apprentice "B"	.60	.95
Tool Room Clk.	.775	.825
Glue Mixer	.75	.80
Winder Helper	.65	.85
Mach. Shop Helper	.70	.80
Slitter Helper	.65	.80

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Contd.

Classification	Rate	Range
Clerk	$.675	$.775
Tractor Operator	.675	.725
Car Bracer-Nailer*	.60	.70
Process Inspector	.60	.75
Press Operator	.60	.70
Final Inspector	.55	.70
Cut-off Operator	.60	.70
Winder Service	.55	.60
Pushout Man	.55	.60
Asphalt Peeler	.55	.60
Asphalt Cutter	.55	.60
Asphalt Melter	.55	.70
Asphalt Wagon Attendant	.55	.70
Asphalt Pourer	.55	.65
Glue Hauler	.55	.65
Slitter Service	.55	.65
Press Service	.55	.60
Oiler	.55	.70
Mach. Shop Service	.55	.60
Stowman	.55	.65
Baling Oper.	.55	.65
Baling Service	.55	.60
Stowman	.55	.60
Tie Oper., Handling 53 A-1	.675	
Tie Oper.	.55	.65
Assembly Service	.55	.60
Water Boy	.55	.60
Utility Service	.55	.70
Assembly Oper.	.50	.60
Janitor	.525	.575
Janitress	.525	.575

(b) The company's original progression plan, as contained in Form 10 Application 4-31227, is hereby ordered.

(c) The rates requested for electricians, machinists, and millwrights are hereby denied.

3. Filing Discharge Grievance

It is noted that the parties have reached an agreement with respect to the filing of discharge grievances.

4. Retroactivity

Wage increases ordered herein shall be retroactive to Feb. 22, 1944, and Feb. 22, 1945, as requested by the parties in Form 10, Case 4-31227.

The procedure to be followed in making retroactive payment to employees who have quit or been discharged shall be in accordance with the National Board's resolution of April 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board or the Regional War Labor Board to make the remaining portions of the order immediately effective.

Report and Recommendations of the Hearing Officer *

June 25, 1945

At the oral hearing before a hearing officer on June 11, 1945, in Memphis, Tenn., all parties involved in this case had a full opportunity to present oral evidence and arguments on the issues in dispute. The case was certified to the War Labor Board on May 11, 1945, by the Conciliation Service of the Department of Labor. Approximately 1,300 employees of the company are involved in this dispute.

ISSUES

I. Check-off:
15-day escape period and
Office space;
II. Wages; and
III. Filing discharge grievances.

PARTIES

The company is a division of the Sefton Fibre Can Company of St. Louis, Mo., and manufactures fibre containers for packing ammunition. One hundred per cent of its production goes directly into the war efforts

The union represents all employees engaged in production and maintenance except superintendents, foreman, guards, watchman, and clerical employees.

* Ed. Note: Only that portion of the hearing officer's report relating to check-off is reproduced.

BACKGROUND

Following a consent election in November 1942, the union was certified by the National Labor Relations Board as the bargaining agent for maintenance and production employees. Contractual relations began in February 1943 and have continued until the present time. In January 1945, the parties entered negotiations on a new agreement for the year of 1945. When negotiations reached an impasse on certain provisions, the Conciliation Service was called in to assist the parties. The Conciliation Service, after becoming convinced that nothing further could be gained through negotiations, certified the case to the War Labor Board on May 11, 1945.

DISCUSSION OF ISSUES

I. Check-Off

Statement of Issues

The union requests the automatic check-off of union dues, initiation fees, rejoining fees, fines, and assessments to implement the maintenance-of-membership provision which has already been agreed upon. The company objects to the check-off and asks that, if it is ordered by the Board, a 15-day escape period be provided and the present office space used by the union be no longer available to the union.

Union's Position

The union contends that it has attempted throughout its bargaining relations with the company to secure the check-off; it believes check-off is essential to good union business in that it saves time of collection of dues for more important work in maintaining good relations between the parties; it is the practice of the union to have the check-off in its other contracts; employees are paid by check and deductions for other things are made and no hardship would be entailed to include the check-off; the check-off would implement the maintenance of membership in that employees who are delinquent in paying dues would not have to be approached or discharged by the company.

Company's Position

The company claims that the check-off is unnecessary because in 2½ years only two employees have been discharged under the union-security clause; office space has been furnished by the company for the collection of dues; the check-off would mean employing additional clerical help; it would also mean that a company official would have to attend union meetings to see that deductions requested were legal and proper in order to protect the company; if check-off is ordered, employees should have opportunity to "escape" through the provision of a 15-day escape period; the plant is crowded and company could use space now furnished to the union.

Discussion

The parties are in agreement that maintenance of membership without an escape period has already been agreed upon, and, therefore, it is not an issue in the case. The issue of check-off is in dispute, and, since the two questions are closely related, the development of Board policy on these matters will be briefly reviewed.

When the National Defense Mediation Board was established in March 1941, it was confronted with many controversies between labor and industry over the union shop. A principle was adopted whereby the degree of union security would not be lessened by the Board, and whatever provision was already in effect between the parties would be continued. In an effort to promote harmonious industrial relations, the Mediation Board succeeded in getting the parties to agree to maintenance of membership where there was no previous provision for union security. Later, in the Cheney Brother case, the company was willing to accept a maintenance-of-membership provision if employees were given prior notice and freedom of choice as to whether they were bound by the clause. A compromise was reached by the addition of a voluntary, irrevocable check-off clause whereby each union member signed an agreement to remain in the union.

Upon the creation of the National War Labor Board to succeed the Mediation Board, the policy established on union security included maintenance of membership. In all cases where maintenance of membership was decided by the Board up to June 1942, the clause was made binding from the effective date of the contract. In an effort to get unanimity among the Board members on the maintenance-of-membership clause, the public members of the Board accepted the suggestion of the industry members for an escape period. In the E-Z Mills Case and Ranger Aircraft Engines Case [1 War Lab. Rep. 290], the Board introduced the provision for maintenance of membership with a

15-day escape period. Members of the union at the end of the escape period were to remain members in good standing for the duration of the agreement or until further order of the Board.

Union constitutions and by-laws have various definitions of what constitutes "good standing" in the union. One of the chief grounds for loss of good standing is dues delinquency for which the penalty is discharge from employment by the company at the request of the union under a union-security clause. The check-off, therefore, began to play an important part in implementing maintenance of membership. Many companies have preferred having a check-off provision where maintenance of membership was provided in order to avoid discharging employees. It has also freed union officials to carry on work productive of better labor relations and greater production.

While the Board has ordered maintenance of membership without the check-off and the check-off without maintenance of membership, the two provisions have usually gone together. Both the voluntary and compulsory check-off have been ordered by the Board, but the Board has, in recent months, tended to order the automatic or compulsory check-off, if requested by the union, unless there have been compelling reasons for not ordering it. The arguments in this case are similar to those presented in many other cases where the Board has ordered the check-off. Since it is Board policy to grant the check-off to implement maintenance of membership and since the hearing officer has found no reason for not granting it, she will recommend a check-off provision.

The union requests the check-off of dues, initiation fees, fines, rejoining fees, and assessments. Board policy has been generally to order the check-off of only dues and initiation fees. However, in reviewing the cases, the hearing officer finds that, in the Firestone Tire and Rubber Co. case, the Tenth Regional Board on Jan. 9, 1945, ordered that "in addition to present check-off of dues, union is entitled to check-off of assessments authorized at membership meetings on ground that they are equivalent to special dues and are levied upon entire membership in same manner as dues." Also, in the U. S. Rubber Co. case, the National Board ordered the check-off of unpaid fines imposed by union as penalty for failure to end wildcat strike, such nonpayment resulting in loss of good standing of 572 employees, the discharge of which would injure essential war production. In another case, Douglas Aircraft Co Inc. [19 War Lab. Rep. 829], the National Board ordered in October 1944 the voluntary deduction of dues and assessments and initiation fees but denied the deduction of fines.

The hearing officer is of the opinion that, while the deduction of regular items is of little additional trouble or expense to a company, the deduction of special items is not justified unless there are special circumstances to warrant it as in the above named cases. The hearing officer, therefore, will recommend the deduction of union dues and initiation fees, thereby following the Board policy.

Escape Period—The company requests that, if the Board orders a check-off provision, an escape period be granted to employees. While there have not been many cases where an escape period was provided for a check-off, there have been a few such instances.

In June 1943, the First Regional Board denied a maintenance-of-membership clause in the Sargent and Co. Inc., case [12 War Lab. Rep. 157] because the union was found to be irresponsible but ordered a check-off provision to all members who do not certify within 15 days their unwillingness to have dues deducted by the company.

In the American Can Co. case on Jan. 14, 1944 [13 War Lab. Rep. 644], the National Board ordered that "contracts between the company and the union which have agreed upon maintenance of membership should also include a compulsory check-off provision provided, however, that, in plants in which a maintenance-of-membership provision is now in effect, check-off should not apply to union members who notify the company within 15 days of Board order that they do not wish their dues deducted."

In September 1944 in the Iowa Canning Co. case [14 War Lab. Rep. 55] the Seventh Regional Board ordered that union having union-shop clause is entitled to check-off of dues and initiation fees provided that employees be given 15-day escape period.

In March 1945, the National Board amended a Regional Board's order in the Grower-Shipper Vegetable Assn.

case [23 War Lab. Rep. 193] granting a compulsory check-off to provide for a 15-day escape period before check-off goes into effect.

Over against these few cases, there are many cases in which the Board has ordered the check-off where there is a maintenance-of-membership or union-shop clause. In some cases the Board has ordered a voluntary irrevocable check-off provision combined with the union shop. This was true in the Wertendyke Co. case [10 War Labor Rep. 170], where the National Board, in July 1943, ordered such a provision; the union in this case, however, had asked for the voluntary check-off. There has been a number of cases where the Board has ordered the continuation of the clause in a renewed contract of maintenance of membership without an escape period and also ordered an automatic check-off. One of the early cases of this kind was the Doubleday, Doran and Co case [12 War Lab. Rep. 527], where the Board in October 1943 took such action. The same provisions were ordered in Whiting-Mead Co. case in April 1944 [17 War Lab. Rep. 382], and in Tinius Olsen Testing Machine Co. case in August 1944 [24 War Lab. Rep. 149].

When the hearing officer questioned the company as to what it meant by an escape period in connection with the check-off, the company replied that it intended for employees to have an opportunity to withdraw from the union. Since this would modify an already agreed upon union-security clause, the hearing officer is of the opinion that the issue is not open for consideration. The issue as to an opportunity to escape from having dues deducted is open, and the hearing officer has considered the request from that angle. The only possible use an employee could make of an escape period in a check-off provision would be to state that he preferred to pay his dues directly to the union rather than to have them checked off by the company. This seems of small advantage to an employee since, under a union-security provision, an employee who has become a member of a union must remain a member in good standing as a condition of employment. In a democracy where people have an opportunity to vote on issues, it is the rule that the minority abide by the decisions of the majority. The membership of the union has requested the check-off system, and those not preferring to use it should bow to the will of the group. It also seems to the hearing officer that it would be a distinct disadvantage to the union to have to collect dues from a few employees when the majority use the check-off and that it would be more inconvenient for the company to check-off dues for some members and not for all.

The company also requests that, if a check-off clause is ordered, that it be relieved of furnishing office space to the union as provided in the former contract. The chief argument of the company on this point was that the space was furnished specifically for the collection of dues. The union claimed that the office had been furnished to handle necessary union business and that the office is used for much more than a place to collect dues. The plant is inconveniently located, and at such a location it would be impossible to secure other space. Records needed in handling the day-by-day business of the union and the company are kept in the office, and many matters are facilitated because of the convenience of the office. The hearing officer noted that the company did not press the point that it needed the space for its own use. It stated that, if the check-off was not ordered, the company would not request the withdrawal of the space.

Since the space occupied by the union is used to conduct the business of maintaining good working relations between the parties and since the company seemed to be using this as a bargaining point, the hearing officer is unwilling to recommend that the company be permitted to withdraw the use of this space from the union.

Recommendation

The hearing officer recommends that the automatic check-off of union dues and initiation fees shall be granted; that the company's request for an escape period in the check-off clause shall be denied; and that the company's request to withdraw the use of office space by the union shall be denied.

[Ed. Note: Issues II and III, discussed in the hearing officer's report at this point, are omitted.]

Signed by Ruth S. Martin, hearing officer for the Board.

Cumulative

Index-Digest

Covering Volume 26 to Date

Rulings by the National War Labor Board, its regional boards and commissions, and the courts made in the decisions appearing in this volume, represented by headnote paragraphs, appear in the following pages arranged and classified by subject matter.

Headings of the principal divisions are arranged alphabetically as are also the headings of the subdivisions, with a few exceptions to bring related subjects together. The purpose of the classification is to afford rapid reference to rulings regarding any particular subject matter.

Numerical designations are given to each main heading and all subheadings to facilitate ready reference to the place in the Index-Digest at which material under such headings and subheadings appears. The same and additional headings with their numerical designations appear in other volumes of WAR LABOR REPORTS, *thus assuring ease in locating rulings on a particular topic in all volumes.*

Main topics appear in capital letters and are designated by numbers followed by a decimal point but without digits beyond the decimal points. All subtopics and their subdivisions are designated by numbers having three digits after the decimal point. Subtopics immediately follow their designating numbers. Subdivisions thereof at the first level are separated from their numbers by one dash; those at the second level, that is, subdivisions of a subdivision, are separated from their numbers by two dashes. In some instances finer or less fine topical breakdown is used in one volume as compared to others.

For assistance in using the Index-Digest of the volumes as a unit, the reader is referred to the "Key" to Volumes 1-20, issued as a special supplement to 25 War Lab. Rep., No. 1 (June 27, 1945). Under each subject heading appear names of relevant cases with volume and page references to headnotes and text.

Rulings made by regional boards, commissions, and courts are so indicated in the Index-Digest. All other rulings are those of the National Board.

The main topics of the classification scheme appear below. Those topic headings which appear with a prefixed star (★) will be found in the Cumulative Index-Digest in this issue; those without the prefixed star appear in other volumes and may appear in later cumulations in this volume.

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Index-Digest

10. ARBITRATION

10.100 Subject Matter of Arbitration

10.101 —In general

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent layoffs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

★ Grievance over allegedly discriminatory discharge of two employees should be submitted anew to single arbitrator for decision where original decision by tripartite board of arbitration was ambiguous and interpretation by two of original members, one of whom had dissented to award, led to new dispute. Decision should not be construed as relaxation of hands-off policy in non-wage arbitration proceedings but as providing solution fair to both parties and free from technicalities under peculiar facts of case.—Washington Garage Co., Inc., 26 War Lab. Rep. 431.

10.103 —Arbitrability of issue

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.124 —Discharge

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.127 —Grievance under union contract

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.137 —Interpretation of contract

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.150 —Merit increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether em-

★ *Indicates decisions in this issue*

ployers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.173 —Suspension

Parties in process of negotiating first contract who have agreed verbally on grievance procedure not terminating in arbitration should submit to arbitration dispute over company's suspension of 20 employees for refusal to perform work assigned by their supervisors. Arbitrator should decide whether company's action was unreasonable or arbitrary under circumstances of case.—Glenn L. Martin Co., 26 War Lab. Rep. 144.

10.196 —Work rules

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.400 Arbitration Procedure

10.468 —Review of award

★ Grievance over allegedly discriminatory discharge of two employees should be submitted anew to single arbitrator for decision where original decision by tripartite board of arbitration was ambiguous and interpretation by two of original members, one of whom had dissented to award, led to new dispute. Decision should not be construed as relaxation of hands-off policy in non-wage arbitration proceedings but as providing solution fair to both parties and free from technicalities under peculiar facts of case.—Washington Garage Co., Inc., 26 War Lab. Rep. 431.

15. BONUS PAYMENTS

15.050 Attendance Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.100 Amount of Bonus

15.101 —In general

★ Employees of investment banking firm subject to WLB jurisdiction are entitled to six per cent year-end bonus but not to 15 per cent bonus proposed by company, despite fact that Salary Stabilization Unit approved 15 per cent bonus for those of company's employees subject to its jurisdiction. Fact that Treasury approves certain bonus payments is not by itself sufficient ground for approval of similar bonus by Board and, except in unusual circumstances not deemed present in instant case, bonus paid by investment firms should be limited to six per cent of annual payroll.—Lehman Bros., 26 War Lab. Rep. 374.

15.416 Discontinuance of Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co. 26 War Lab. Rep. 90.

15.800 Wage Increase to Offset Discontinued Bonus

Union's request for increase to compensate for alleged inequalities caused by discontinuance of incentive bonus is denied since job rate adjustments previously directed by Board adequately compensate for discontinuance of bonus.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

20. CHECK-OFF

20.100 Compulsory Dues Deduction

20.110 —Combined with membership maintenance

Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

20.300 Voluntary Dues Deduction

20.325 —Check-off with escape clause

Region IV (Atlanta)

★ Board denies company's request that automatic check-off, if ordered, include

15-day escape period, despite fact that negotiated maintenance-of-membership provision contains no escape clause. Hearing officer found that (1) number of cases in which National Board has required escape clause in check-off provision is small relative to number in which no escape clause has been granted and that (2) escape period would advantage union members only by giving them option of paying union dues in person since dues payment is necessitated by membership-maintenance. (Region IV—Atlanta)—Sefton Fibre Can Co., 26 War Lab. Rep. 475.

Region VII (Kansas City)

Union whose existing contract provides for maintenance of membership without escape clause and for voluntary check-off is awarded non-revocable check-off provision to apply to all employees who do not, within 15 days of date of Board's order, notify company that they do not wish to submit to check-off arrangement. Escape period is provided on theory that employees must have free opportunity to escape from union-security clauses included in contracts by Board order. (Region VII—Kansas City)—Airtherm Mfg. Co., 26 War Lab. Rep. 220.

20.700 Reason for Granting Check-Off

20.715 —Dues collection difficulties

20.722 — —Physical barriers to collection

Region III (Philadelphia)

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.779 —Responsible union

Responsible union is entitled to voluntary check-off with proviso that neither party should coerce any employee into signing dues deduction certificate. Regional Board's order denying check-off because of small size of bargaining unit and because company permitted dues collection on company property is accordingly reversed.—General Motors Corp., 26 War Lab. Rep. 145.

20.790 —Union shop, enforcement

Region III (Philadelphia)

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where (1) delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved and (2) union has refrained from requiring discharge of members not in good standing. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.810 Reason for Denying Check-Off

20.865 —Representation question

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

32. COLLECTIVE BARGAINING

32.400 Obligation to Bargain

32.415 —Change in company ownership

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated. —F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

32.820 Unit for Bargaining

32.847 —Supervisory employees

★ Union's request is granted that chef employed by intrastate club be included in bargaining unit and be covered by preferential hiring provision where union claimed that in all but two of largest establishments in industry in area head chef is classified as working chef and included in bargaining unit. Regional Board's order excluding chef is amended accordingly.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

32.857 —Unit determined by NLRB

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

37. CONTRACTS

37.350 Duration of Contract

37.365 —Extension of contract

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

37.370 —Reopening provision

Union is entitled to provision in contract entitling it to reopen contract on ten days' notice in event of change in national wage policy, despite company's objections that such clause would work hardship on it since it is working on fixed-rate war contracts.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

Petition for review of Regional order reducing straight-time hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

★Contract may be reopened on wage question in event of substantial change in national wage policy.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

Region IV (Atlanta)

Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages, where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region V (Cleveland)

Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.600 Interpretation of Contract

West Coast Lumber Commission

Lumber pilers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission)—McGoldrick Lumber Co., 26 War Lab. Rep. 216.

Region IV (Atlanta)

Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region V (Cleveland)

Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Fire-

stone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.822 Ratification of Contract

Region X (San Francisco)

Contract which was not ratified by local union's membership as required by resolution adopted at union meeting is not valid and binding, despite contention of company that it was clearly understood that all participants in negotiations were authorized to preclude binding agreement on behalf of their respective parties. Injustice that may be done to employers by reopening negotiations is outweighed by resultant damages to stable relationship from compelling union members to accept agreement they rejected. (Region X—San Francisco)—Motion Picture Producers Assn., Inc., 26 War Lab. Rep. 318.

41. DEFINITIONS

41.650 Status Quo

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46. DISCHARGE AND REINSTATEMENT

46.200 Reason for Discharge

46.206 —Contract violation

Region I (Boston)

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 35.

46.213 —Fighting

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

46.245 —Union activities

Region 1 (Boston)

Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted (Region V—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

46.350 Reinstatement by Board Order

46.410 —Reinstatement pending settlement of dispute

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46.425 —Reinstatement with back pay

Company should reinstate with back pay and full seniority employee with

twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

49. EMPLOYEES' BENEFITS

49.001 In General

Employer is not obligated to restore practice of giving free meals to cafeteria employees on request of union where there was no showing that abolition of free meals coincident with introduction of new wage schedule resulted in wage cut and no supporting practice in the area or industry exists.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

49.300 Insurance Benefits

Region I (Boston)

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far-reaching repercussions on company's structure. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

Region X (San Francisco)

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 96½ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan, (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance. (Region X—San Francisco)—San Francisco Wholesale Jewelers, 26 War Lab. Rep. 78.

49.800 Sick Benefits

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated, despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave, and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Company which has liberal group health insurance plan for employees with one or more years of service should grant three days' sick leave to employees with 6 to 12 months' service in accordance with its counterproposal to union's demand for six days' sick leave for all employees.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employees engaged in loading shells are not entitled to paid sick leave where employer compensates employees at two-thirds' pay for time lost due to industrial accidents prior to beginning of workmen's compensation payments. Regional Board's order granting six days' paid sick leave because of hazards of industry, accordingly, is vacated.—J-M Service Corp., 26 War Lab. Rep. 239 *(amending* 17 War Lab. Rep. 809).

55. ENFORCEMENT OF ECONOMIC STABILIZATION ACT

55.700 Unauthorized Wage Reductions

Territorial Board (Honolulu)

★ Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

60. GRIEVANCES

60.100 Right to Present Grievances

60.105 —Absence of lawful bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and

by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.160 Means of Presenting Grievances

60.169 —Individual presentation

Employee may present grievance either individually or in presence of shop committeeman or, if employee so desires, grievance may be presented by shop committeeman, union to be notified of all grievances. Regional Board's order providing that grievances should be presented in presence of committeeman or by committeeman is amended accordingly.—Auburn Spark Plug Co., 26 War Lab. Rep. 240.

Individual employees are entitled to present grievances in person but company should notify union of all grievances filed and should negotiate with union concerning disposition of such grievances except those involving exclusively some question of fact or conduct peculiar to employee lodging grievance and not involving either interpretation of contract or question properly a subject of collective bargaining. Regional Board's order requiring presence of union steward during initial presentation of grievances and excluding individual employee from further processing of grievance is amended accordingly. —Ohio Brass Co., 26 War Lab. Rep. 250.

60.200 Definition of Grievances

60.220 —Grievance scope in absence of lawful bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly. —Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.600 Pay for Grievance Representatives

Regional Board's order directing company to compensate union representatives for earnings lost while handling grievances is remanded for reconsideration, where company contended decision was in violation of National Board policy against ordering such compensation in dispute cases in absence of prior company practice.—Ohio Brass Co., 26 War Lab. Rep. 250.

60.700 Grievance Procedure

60.715 —Arbitration of grievances

Parties should negotiate arbitration clause to be included in their contract grievance procedure. If they fail to reach agreement in 30 days, issue should be returned to Board.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

60.800 Subject Matter of Grievances

See also 60.220 above.

60.814 —Job rates

★ Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or decided by arbitrator, is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

60.818 —Merit increases

Employer who has granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration.—Edward Ermold Co., 26 War Lab. Rep. 296 (*amending* 20 War Lab. Rep. 629).

60.856 —Wage inequalities

★ Union's request that, when employee's normal work assignment overlaps two or more classifications, he should be paid rate for highest classification is denied. As proposed by company, when it can be shown that such work assignment overlays two or more classified occupations, employee's classification may be submitted to grievance procedure.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

65. HOURS OF WORK

65.180 Call-In Time

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate, even though em-

ployee is prevented from working by existence of work stoppage in which he is not participating.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

65.300 Meal Period

Employees working overtime are not entitled to be paid meal period where panel finds that (1) existing meal allowance of 60 cents is liberal when compared to industry and area practice and (2) demand for paid meal period does not conform to industry and area practice. Regional Board's order granting half hour's paid meal period when employees were required to work 1.5 hour's overtime without prior notice is vacated.—Carter Ink Co., 26 War Lab. Rep. 243.

65.410 Pay for Time Not Worked

Region VIII (Dallas)

Employees reporting for or performing jury duty on regularly scheduled workday are entitled to straight-time pay for such days, despite contention of company that it has no voice in calling employees to appear for jury service and award would provide employees with double compensation, regular pay from company and jury fee from Government. (Region VIII—Dallas)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 339.

65.500 Reduction of Working Hours

65.508 —Curtailment of operations

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

65.538 —Straight-time hour reduction

Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 58 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopening wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

65.730 Travel Time

Employees of ordnance plant are not entitled to portal to portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves and Board has not, therefore, solved these issues except in unusual circumstances.—E. I. duPont de Nemours & Co., 26 War Lab. Rep. 67.

65.800 Waiting Time

See Wages—Incentive Wage Systems, 260.184.

75. JOB CLASSIFICATIONS

75.050 Adjustment of Classifications

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

★ Regional Board's order requiring negotiation of rate ranges around weighted average of present rates in each occupation is amended by elimination of reference to weighted averages and by addition of proviso that negotiated rates should not result in average wage increase exceeding one per cent. Company contended that Regional restriction would require perpetuation of intra-plant inequities.—Chicago Flexible Shaft Co., 26 War Lab. Rep. 401.

★ Southern airframe plant is directed to change present wage structure to make it substantially identical with that of Southern California airframe industry since, among other things, all but one of major airframe companies in southern area, which are within jurisdiction of Airframe Panel, maintain wage scales at or above SCAI levels. Order includes substantial increases for least skilled classifications, despite contention that such increases would be unstabilizing in low-wage area.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III—

Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

75.300 Establishment of Classifications

75.330 —Union approval of classifications

Regional Board order providing that company should grant union permission to review job classifications is modified to limit such review to "new" job classifications, where union's demands on this issue related to new classifications.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

77. JOB PROTECTION

77.050 Apprenticeship Rules

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

77.220 Guaranteed Earnings

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

77.260 Hour Reduction Before Layoffs

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

78. JOB VACANCIES

78.300 Filling Vacant Jobs

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

82. JURISDICTION OF BOARD

82.100 Basis of Jurisdiction

Dispute of union with employer who has ceased business and moved to other state should be settled on merits by Regional Board since final decision in such situation may be rendered to extent that useful purpose will be served thereby.—Trav-Ler Karenola Radio & Television Corp., 26 War. Lab. Rep. 172.

82.300 Concurrent Jurisdiction with NLRB

82.307 —Bargaining unit

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

82.500 Intrastate Business, Jurisdiction

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—

Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

82.700 Non-War Industries, Jurisdiction

82.710 —Charitable institution

★Board rejects contention that it should dismiss dispute between group of non-profit hospitals and union as dispute outside Board's jurisdiction since particular dispute was certified to Board almost one year prior to Board's determination not to decide any more disputes involving non-profit organizations. Consideration of dispute is required by elementary principles of equity and finds abundant precedent in legislative practice which gives only prospective effect to statutory enactment.—New York Hospitals, 26 War Lab. Rep. 438.

82.850 Refusal of Jurisdiction

82.874 —Issue within NLRB jurisdiction

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated. —F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

82.891 —Plant no longer operating

Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

82.930 Substantive Limitation on Jurisdiction

82.944 —Recognition dispute

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

110. MAINTENANCE OF MEMBERSHIP

110.100 Reason for Awarding Maintenance of Membership

110.101 —In general

Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

110.126 —Employer hostility to union

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

110.165 —Responsible union

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike pledge and had democratic constitution,

Commission is requested, in view of Board's action on maintenance of membership issue, to issue order on union's request for check-off.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.220 Reason for Denying Maintenance of Membership

110.260 —Irresponsible union

Board reverses order of Newspaper Commission which denied maintenance of membership on finding that union was irresponsible where Commission also found that union had kept its no-strike pledge and had democratic constitution.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.279 —Strike after no-strike agreement

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes Such denial, however, should not bar consideration of issue in new case presently pending before Board and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

110.281 —Union not bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

110.340 Membership Maintenance Without Escape Clause

★Union is entitled to union-security clause previously adopted by parties, providing for hiring through union, but not to further provisions directed by Regional Board on basis of practice in industry in area, namely, maintenance of membership without escape clause, preferential hiring, and provision that new employees hired outside union may be bumped by union members during first 30 days of their employment.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

★Maintenance-of-membership provision awarded union should contain 15-day escape clause. Regional Board's order eliminating escape clause is amended accordingly despite union's contention that protracted negotiations gave employees year's period within which to withdraw from membership.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

110.480 Conditional Maintenance - of - Membership Award

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 185.

110.897 Renewal of Maintenance-of-Membership Clause

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 Lab. Rep. 185.

114. MANAGERIAL FUNCTIONS

114.400 Job Rates, Determination

★Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Existing incentive system, however, may not be changed or extended to hourly-rated jobs without consent of union. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or determined by arbitrator is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

114.875 Work Force Size

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled imme-

diately by company with another worker. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

135. PREFERENTIAL SHOP

135.200 Hiring Preference for Union Members

135.220 —Hiring preference combined with membership maintenance

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

★Union is entitled to union-security clause previously adopted by parties, providing for hiring through union, but not to further provisions directed by Regional Board on basis of practice in industry in area, namely, maintenance of membership without escape clause, preferential hiring, and provision that new employees hired outside union may be bumped by union members during first 30 days of their employment.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

140. PREMIUM WAGE RATES

140.200 Holiday Premium

140.230 —Award of holiday premium

★Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.278 —Pay on holidays not worked

Employees are not entitled to straight-time pay for six annual holidays not worked, as ordered by Regional Board, where company contends that there is complete lack of industry, area, or company practice to support such order.—Paraffine Cos., 26 War Lab. Rep. 162.

Employees are not entitled to straight-time pay for holidays not worked since such payment is contrary to industry and area practice. Regional Board's order granting pay for religious holidays not worked is, therefore, vacated.—M. Davidson & Sons, 26 War Lab. Rep. 270.

★Hospitals should continue present practices concerning pay for holidays not worked. Regional Board's order requiring that number of paid holidays be increased from 10 to 11 in two hospitals and from 8 to 11 in third is amended accordingly.—New York Hospitals, 26 War Lab. Rep. 438.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.400 Overtime

140.405 —Computation of overtime

★For purposes of determining obligation to pay time and one-half for work after first five days of workweek, employer should count as full workday any day on which work is not made available to employee where employer has agreed to such rule in computing sixth day of workweek but objects to application for purposes of computing seventh day of workweek.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

140.415 —FLSA-exempt employees

Overtime for interstate bus drivers on regularly assigned runs other than straight-away runs should begin after 8 hours in a spread of 10, as requested by union, rather than after 8 hours in a spread of 11, as at present.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

Region III (Philadelphia)

Restaurant employees in five department stores are entitled to receive time

and one-third for hours in excess of 8 a day or between 40 and 44 a week and time and one-half for all hours in excess of 44 a week. Premium pay ordered will correct intra-plant inequity both within unit comprising restaurant employees and between restaurant employees and remaining department store employees. (Region III —Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

140.500 Seventh-Day Premium

140.502 —Application of seventh-day premium

★For purposes of determining obligation to pay time and one-half for work after first five days of workweek, employer should count as full workday any day on which work is not made available to employee where employer has agreed to such rule in computing sixth day of workweek but objects to application for purposes of computing seventh day of workweek.—Douglas Aircraft Co., Inc., 26 War Lab. 375.

140.510 —Doubletime for seventh consecutive day

★Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

140.549 —Time and one-half for seventh day

Interstate bus drivers working on their regular day off are entitled to receive not less than eight hours' pay at time and one half their regular rate.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

140.550 Shift Premium

140.565 —Nightwork premium

Newspaper Commission's denial of night-shift premiums for editorial employees is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Region III (Philadelphia)

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award, since nightwork premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.575 —Rotating-shift premium

★Employees of milling company operating rotating shifts are not entitled to night-shift premiums granted by Regional Board where Regional award was not justified by industry or area practice.—International Milling Co., 26 War Lab. Rep. 447.

140.589 —Second-shift and third-shift premiums

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Plant protection employees in powder plant are entitled to night-shift premiums of four and six cents for work on second and third shifts respectively. Regional Board's order granting five and and ten cents on basis of area practice is amended accordingly, Regional Board having resolved doubt in favor of premium although employer claimed that base rates included compensation for night work.—Atlas Powder Co., 26 War Lab. Rep. 142 (*amending* 21 War Lab. Rep. 196.)

Board's prior order directing company to establish second-shift and third-shift premiums of four and six cents respectively is interpreted as not requiring company to add such premiums to base pay for incentive workers for purpose of computing incentive pay since purpose of order was to establish uniform amounts of shift premiums for all employees.—Sheet Glass Cos., 26 War Lab. Rep. 246.

Region IV (Atlanta)

★Employees are entitled to shift differentials of four cents for second shift and six cents for third shift, less average value per hour of paid half-hour lunch periods granted by company. Dissenting labor members contend that Board exceeded its authority in injecting into dispute over shift premiums non-disputed issue of paid lunch period and that deduction of lunch-period pay is unprecedented negation of

shift-premium award. (Region IV—Atlanta)—General Chemical Co., 26 War Lab. Rep. 457.

Region V (Cleveland)

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second shift and ten cents for third increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected. (Region V—Cleveland)—Electric Controller & Mfg. Co., 26 War Lab. Rep. 109.

140.600 Sixth-Day Premium

140.601 —Application of sixth-day premium

Under contract requiring company to pay time and one-half for sixth day of workweek, each day of the first five on which the company fails to make eight hours of work available being counted as a day worked, employer is not obligated to pay time and one-half for sixth day when one of the first five is a holiday, which, in accordance with contract, is not worked and is paid for at straight time.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

140.610 —Time and one-half for sixth day

★Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

140.670 Special Premium Rate

Territorial Board (Honolulu)

Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

140.677 —Hazardous work premium

★As compensation for additional risk, flight technicians are entitled to $1.50 per hour in addition to regular pay for all time spent in testing, adjusting, recording, and operating aircraft equipment during test flights. Minimum of $1.50 shall be paid for first ascension of any day.—Southern California Aircraft Industry, 26 War Lab. Rep. 379.

143. PROCEEDINGS BEFORE BOARD

143.300 Fair Hearing

★Regional Board's order eliminating beginners' and learners' rates is remanded with instruction that hearing be held on merits of issue. Company contends that it was never given opportunity to be heard on merits.—Laclede Steel Co., 26 War Lab. Rep. 438 *(remanding* 23 War Lab. Rep. 595).

155. SENIORITY

155.290 Exception to Seniority Provisions

Region V (Cleveland)

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended, among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables. (Region V—Cleveland)—Reynolds Metal Co., Inc., 26 War Lab. Rep. 95 *(reversing* 24 War Lab. Rep. 360).

155.400 Layoff and Rehiring

155.410 —Inter-plant seniority

★Parties should negotiate issue of inter-plant seniority for older employees. Board vacates Regional order providing that, in event of layoff, employees hired prior to Dec. 7, 1941, may displace junior employees on same jobs in company's other plants

in which union is bargaining agent.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375 *(amending* 25 War Lab. Rep. 229).

155.420 —Seniority as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

155.500 Promotion Preference

155.540 —Length of service as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.—Mines Equipment Co., 26 War Lab. Rep. 148.

155.580 Supervisory Employees

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

155.600 Transfers

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

161. SEVERANCE PAY

161.001 In General

★ Employees of airframe company are not entitled to award of severance pay since it would not be "fair and equitable" to compel severance pay under circumstances prevailing in aircraft industry where (1) it was known from start of war production that postwar aircraft production would amount to only small perecentage of wartime volume and (2) virtually entire aircraft program is financed by Government and cost of any severance pay plan would have to be borne by Government.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

165. STRIKES

165.100 Board Procedure in Strike Cases

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute.—General Motors Corp., 26 War Lab. Rep. 53.

165.400 No-Strike Agreement in Contract

165.445 —Violation of no-strike, no-lockout clause

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract should be disciplined on first offense and discharged on second offense is vacated.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

165.500 Penalty for Strike After No-Strike Agreement

165.540 —Union security denial

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

★ Union which engaged in wartime strikes is not entitled to union-security order. Denial is without prejudice to right of either party to ask for reconsideration six months after date of order.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

172. UNION AFFAIRS

172.245 Expulsion From Union

Region V (Cleveland)

★ Union is entitled to union-shop clause where such clause was contained in com-

pany's contract with predecessor independent union. Employees not accepted for union membership or suspended by union for violation of constitution should be discharged, provided that they may later be reinstated without accumulated seniority if company and union so agree. (Region V—Cleveland)—Buckeye Forge Co., 26 War Lab. Rep. 464.

172.400 Posting Union Notices

Union is entitled to post official notices on company-furnished bulletin board after notices have been approved by plant personnel department, as was provided in prior contract. Union is not entitled, however, to post notices unapproved by company, as was provided by Regional Board, where company claimed prior provision is part of all contracts between it and other unions and no claim was made that company ever abused its discretion.—Paraffine Cos., 26 War Lab. Rep. 163.

172.600 Union Activity on Company Time and Property

Region I (Boston)

Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted. (Region I—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

185. UNION RECOGNITION

185.200 Bargaining Recognition

See Collective Bargaining, 32.400.

185.500 Grievance Recognition

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

190. UNION SECURITY (not elsewhere classified)

190.450 Reason for Denying Union Security

190.465 —Violation of no-strike pledge

★ Union which engaged in wartime strikes is not entitled to union-security order. Denial is without prejudice to right of either party to ask for reconsideration six months after date of order.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

195. UNION SHOP

195.600 Reason for Denying Union Shop

★ Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations. —Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

195.700 Retention of Prior Union-Shop Provision

195.701 —In general

Region X (San Francisco)

★ Union is entitled to continuation of union-shop clause contained in expired contract pending settlement of new contract terms. Dissenting industry members contend that clause had become dead letter in old agreement and its vitalization now will place company in position where it must choose between forcing present employees to join union, replacing entire staff, or closing down operations. (Region X — San Francisco) — Associated Dairy Products, 26 War Lab. Rep. 473.

195.703 —Prior contract with predecessor union

Region II (New York)

★ Union is entitled to union-shop clause contained in predecessor union's contract with modification to permit continued employment of prison parolees whom union has refused to admit to membership. Company's contention that union-shop clause will interfere with production because certain key employees would quit rather than join union and labor is scarce in area is rejected. (Region II—New York) —Chazy Lime and Stone Co., 26 War Lab. Rep. 459.

Region V (Cleveland)

★ Union is entitled to union-shop clause where such clause was contained in company's contract with predecessor inde-

pendent union, thereby establishing custom in employer-employee relations which should not now be disturbed. Employees not accepted for union membership or suspended by union for violation of constitution should be discharged, provided that they may later be reinstated without accumulated seniority if company and union so agree. (Region V—Cleveland)—Buckeye Forge Co., 26 War Lab. Rep. 464.

195.710 —Employees excepted from union-shop requirement

Region II (New York)

★Union is entitled to union-shop clause contained in predecessor union's contract with modification to permit continued employment of prison parolees whom union has refused to admit to membership. (Region II—New York)—Chazy Lime and Stone Co., 26 War Lab. Rep. 459.

205. VACATIONS

205.100 Vacation with Pay

205.106 —Award of paid vacation

Interstate bus company should grant 6 days' vacation to employees with one to five years' service and 12 days' vacation to employees with five or more years' service, method of computing vacation pay to be determined by parties.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

205.112 —Eligibility for paid vacation

Full vacation allowance should be paid to drivers who are discharged by interstate bus company or who leave company's employ to enter armed services.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

★One year's seniority for purpose of determining vacation eligibility under contract should be defined as 12 months on company's payroll, as proposed by union, rather than, as proposed by company, 12 months of continuous service.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

205.150 —Vacation pay, computation

★Limitation on amount of employees' vacation pay should be increased from 40 to 48 hours per week where company is operating on scheduled 48-hour week.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

Region II (New York)

In computation of vacation pay on basis of straight-time average hourly earnings, shift premiums should be included since, under National Board's policy, only factor to be excluded under term "straight-time earnings" is premium pay for overtime work. (Region II—New York)—American Smelting & Refining Co., 26 War Lab. Rep. 333.

205.300 Vacation Plan

205.320 —Liberalized plan

205.323 — —Award of liberalized plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton garment case and (2) branches of textile industry in which only one week is granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

As directed by Regional Board, employees are entitled to second week's vacation after five years of service, but Regional Board's order granting pro-rated vacations between one and five years is vacated.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

Employees of shell loading plant who now receive one week's vacation after six months' service are also entitled to second week's vacation after five years' service on basis of practice in area. Regional Board's order denying liberalization of vacation plan is amended accordingly.—J-M Service Corp., 26 War Lab. Rep. 239.

Regional Board's order granting standard one-for-one and two-for-five vacation plan and providing for prorated vacation benefits for years between one and five is modified by removal of proration clause.—M. Davidson & Sons, 26 War Lab. Rep. 270.

205.332 —Plan less liberal than prior practices

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two

weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

205.334 —Prorated vacations

★Regional Board's order awarding prorated vacation benefits to employees having two to four years' service is referred back to Regional Board for reconsideration in light of area and industry practice.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

205.700 Bonus in Lieu of Vacation

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

225. WAGE ADJUSTMENTS (not elsewhere classified)

225.100 Ability to Pay Increased Wages

225.137 —Ability to pay immaterial

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.300 Effective Date of Wage Adjustments

225.330 —Retroactive effective date

225.331 — —In general

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commissioner after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten and Board's customary criteria for determining retroactive dates, therefore, are not applicable.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

"Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.338 — —Certification of dispute to Board

★Wage adjustments directed by Board in dispute over first contract should be made retroactive to certification date of dispute.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

★Retroactive date for awarded wage adjustments should be date of certification of dispute to Board rather than date of expiration of last contract between union and non-profit hospital.—New York Hospitals, 26 War Lab. Rep. 438.

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

225.343 — —Contract negotiations, commencement

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, how-

ever, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.344 — —Contract reopening date

Awarded wage increase should be retroactive to date about one month after union served notice that it desired to reopen contract.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

225.346 — —Date agreed to by parties

Board's prior order approving parties' agreement on retroactive date is amended on employer's request to require that adjustments be made retroactive to agreed-upon date.—Sheet Glass Cos., 26 War Lab. Rep. 246.

Effective date of directed decrease in incentive rate should be agreed upon by parties. Regional Board's order setting date one week earlier is amended accordingly.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.348 — —Date specified by Board

★Hazardous work premium directed by Board should be made retroactive to date one month after union petitioned for establishment of such premium.—Southern California Aircraft Industry, 26 War Lab. Rep. 379.

225.353 — —Expiration date of prior contract

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.364 — —Going rates effective

Wage adjustments directed by Regional Board on basis of area foundry rates established pursuant to "rare and unusual" proceedings should be made retroactive to same date as were rates in "rare and unusual" cases. Board's prior order making instant adjustments retroactive only to date on which "rare and unusual" rates were approved by Regional Board is amended accordingly.—Pettibone Mulliken Corp., 26 War Lab. Rep. 162 *(amending* 24 War Lab. Rep. 625).

225.379 — —Panel hearing

Wage adjustments which result from directed reclassification of cafeteria jobs should be retroactive only to date of panel hearing. Panel recommended no retroactivity on ground that, prior to hearing, union had made only generalized and unapprovable wage demands and had not requested any adjustment of cafeteria jobs as such.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

225.396 — —Wages first became issue in negotiations

Region XI (Detroit)

★Awarded wage adjustments should be retroactive to date of commencement of negotiations on wages rather than to earlier date of expiration of prior contract or later date of certification of dispute where (1) negotiations on wages were not undertaken until several months after signing of current contract, which contained no provision as to retroactivity, and (2) conciliator delayed in referring dispute to WLB. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiations for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.398 Computation of Retroactive Adjustment

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

★Merit increases employees would have earned under directed, semi-automatic

progression plan should be computed and paid as of retroactive date specified in Regional Board's order. Employer is not required, however, for purpose of such computations, to credit employees with six months of service prior to retroactive date, as ordered by Regional Board.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

225.630 Length-of-Service Wage Increases

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

★ Employees in lower grade hourly-rated jobs are entitled to automatic in-grade progression to eliminate intra-plant inequity caused by fact that automatic progression is in effect for comparable incentive workers.—Chicago Flexible Shaft Co., 26 War Lab. Rep. 401.

Region XI (Detroit)

★ Employees are entitled to automatic progression to midpoint of respective rate ranges within period of not less than four months for unskilled jobs, six months for semi-skilled jobs, and eight months for skilled jobs. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

225.640 Merit Wage Increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

Employer who had granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration. Amount of merit increases is limited to overall average of ten cents per hour in any year. Board accordingly amends Regional Board's order, which required grant of merit increases to all employees making "normal progress" subject to same ten-cent limitation.—Edward Ermold Co., 26 War Lab. Rep. 296 (*amending* 20 War Lab. Rep. 629).

★ Merit increases employees would have earned under directed, semi-automatic progression plan should be computed and paid as of retroactive date specified in Regional Board's order. Employer is not required, however, for purpose of such computations, to credit employees with six months of service prior to retroactive date, as ordered by Regional Board.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

Region XI (Detroit)

★ Employees are entitled to automatic progression to midpoint of respective rate ranges within period of not less than four months for unskilled jobs, six months for semi-skilled jobs, and eight months for skilled jobs, and to merit increases thereafter, each employee being judged against objective standards of performance which parties may negotiate or company should make known to union. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

225.755 Reduction in Wage Rates

225.764 —Piece rate reduction

Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officers' finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.770 Review of Wage Rates

225.780 —Contract provision for reopening wage issue

See Contracts: 37.370.

225.900 Voluntary Wage Adjustment

225.940 —Retroactive effect for voluntary adjustments

"Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Dogulas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.945 —Wage approval cases

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III —Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

225.968 Wage Increase to Offset Shorter Hours

Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 54 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

235. WAGE DIFFERENTIALS

235.180 Inter-Industry Differential

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

245. WAGES—COST-OF-LIVING ADJUSTMENTS

245.300 15 Per Cent Rule

245.310 —Application of 15 per cent rule

245.3101 — —In general

Newspaper Commission's order denying union request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were entitled to further average increase of 77 cents a week. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.—New York Herald-Tribune, 26 War Lab. Rep. 18.

245.315 — —Employees paid commissions

★ Commission-paid taxi drivers are not entitled to increases amounting to 15 per cent of average daily earnings in January 1941, as directed by Regional Board, where present earnings are substantially greater than earnings in 1941 without additional effort on part of employees. Wage question is returned to parties for negotiation with particular reference to establishment of minimum guarantee and, if no settlement is reached within 30 days, Board will direct reasonable guarantee.—Sunshine Cab Corp., 26 War Lab. Rep. 349 (*amending* 17 War Lab. Rep. 476).

245.317 — —Individual wage adjustments

★ Employees of mail order house are entitled to seven-cent general increase under 15 per cent rule, despite company's contention that increases granted in minimum rates and to groups of individuals constitute general increases satisfying rule. Treatment of such increases as merit increases rather than general increases is in accordance with decision in earlier case involving same issue at another plant of company. Awarded increase should be applied to minima and maxima of existing rate ranges as well as to individuals.—Montgomery Ward & Co., 26 War Lab. Rep. 451.

245.3195 — —Unit for application of rule

Regional Board should reconsider denial of Little Steel wage adjustment to employees of one commercial printing firm

where denial was result of applying formula to the three commercial printers in area as a unit. Parties contended (1) that Little Steel increase would be due if formula were applied to instant company as separate unit, and (2) that, although rates are identical with those paid by other two firms, they are below those paid by newspapers in area—Lyons, Harris & Brooks Printing Co., 26 War Lab. Rep. 197.

245.340 —Prior increases exceeding 15 per cent

Union's request for general wage increase is denied since, among other things, prior increases since Jan. 1, 1941, have exceeded 15 per cent.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

★In addition to increased minimum job rates, employees of hospitals are entitled to four-cent increase in rates paid to individuals to correct inter-plant inequities but are not entitled to 15 per cent cost-of-living increases awarded to all employees by Regional Board since no increase is due under 15 per cent rule.—New York Hospitals, 26 War Lab. Rep. 438.

250. WAGES—GOING WAGE RATES

250.050 Application of Going Rate Criterion

250.051 —In general

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Present award will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston) —Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

250.052 —Appropriate bracket

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250.060 Incentive work

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.100 Adjustment to Minimum Going Rates

Drivers employed by interstate bus company are entitled to increase bringing rate for first two years to 3.5 cents per mile and rate after two years to 4 cents where (1) company offered such rates on basis of rates paid by local bus companies with which it competes and (2) average rate paid by all bus companies in states served by company is 4.23 cents per mile. Such award is without prejudice to determination of any further increase justified by slowdown regulation of Office of Defense Transportation.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

★Hospitals should establish specified minimum job rates and should deduct from wages no more than specified amounts for value of room and meals furnished to employees where Regional Board so directed on ground that order corrected substandard rates below 50 cents an hour and represented conservative application of going rates applicable to similar occupations in other industries.—New York Hospitals, 26 War Lab. Rep. 438.

★In addition to increased minimum job rates, employees of hospitals are entitled to four-cent increase in rates paid to individuals to correct inter-plant inequities but are not entitled to 15 per cent cost-of-living increases awarded to all employees by Regional Board since no increase is due under 15 per cent rule.—New York Hospitals, 26 War Lab. Rep. 438.

250.200 Adjustment Above Minimum Going Rates

250.205 —Denial of adjustment

Union requests for general wage increase is denied since existing rates are among highest in area and prior increases since Jan. 1, 1941, have exceeded 15 per cent. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Employees of aircraft company's cafeteria are not entitled to wage increase where existing rates were approved by Board approximately one year ago and are those presently in effect in other comparable companies.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

250.220 —Industry rate stabilization

★ Southern airframe plant is directed to change present wage structure to make it substantially identical with that of Southern California aircraft industry since, among other things, all but one of major airframe companies in southern area, which are within jurisdiction of Airframe Panel, maintain wage scales at or above SCAI levels. Order includes substantial increases for least skilled classifications, despite contention that such increases would be unstabilizing in low-wage area.—Bell Aircraft Corp. 26 War Lab. Rep. 412.

250.300 Determination of Going Rates

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.960 Transit Industry Formulae

250.967 —Suburban transit line

Region XII (Seattle)

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2), as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on April 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates. Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed. (Region XII—Seattle)—East Side Busses, Inc., et al., 26 War Lab. Rep. 93.

260. WAGES—INCENTIVE WAGE SYSTEMS

260.100 Adjustment of Piece Rates

260.124 —Intra-company inequities

Lace manufacturers should grant five per cent increase in contractural minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.130 —Reduction in piece rates

Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officer's finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

260.184 Downtime

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.200 Establishment of Incentive Rates

★ Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Existing incentive system, however, may not be changed or extended to hourly-rated jobs without consent of union. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or determined by arbitrator, is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

260.600 Modification of Incentive Plan

★ Although company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, existing incentive system may

not be changed or extended to hourly-rated jobs without consent of union.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

265. WAGES—INEQUALITIES

265.100 Inequalities as Reason for Wage Adjustment

265.135 —Inequalities within plant

Lace manufacturers should grant five per cent increase in contractual minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War. Lab. Rep. 56.

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

265.158 —Inequalities between unionized plants

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and 8 per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston)—Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

265.300 Creation of Inequalities as Ground for Denying Adjustment

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied, since among other things, requested adjustments would create inequalities in plant's existing job classification system.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

275. WAGE—JOB RATES

275.130 Highest Applicable Rate Rule

★ Union's request that, when employee's normal work assignment overlaps two or more classifications, he should be paid rate for highest classification is denied. As proposed by company, when it can be shown that such work assignment overlaps two or more classified occupations, employee's classification may be submitted to grievance procedure.—Bell Aircraft Crop., 26 War Lab. Rep. 412.

275.500 Job Rates for Transferees Within Plant

★ Employee assigned to higher job classification should receive not less than minimum rate of pay for higher classification. Employee may be assigned to classification with lower pay only if (1) he is unable to meet requirements of present job, (2) sufficient work is not available in present job, or (3) change is made at employee's request.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

West Coast Lumber Commission

Lumber pilers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which

provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission) —McGoldrick Lumber Co., 26 War Lab. Rep. 216.

285. WAGES—MINIMUM RATES

285.400 Increase in Minimum Rates

285.410 —Cost-of-living adjustment

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

295. WAGES—SUB-STANDARD RATES

295.200 Elimination of Substandard Rates

★Hospitals should establish specified minimum job rates and should deduct from wages no more than specified amounts for value of room and meals furnished to employees where Regional Board so directed on ground that order corrected substandard rates below 50 cents an hour and represented conservative application of going rates applicable to similar occupations in other industries.—New York Hospitals, 26 War Lab. Rep. 438.

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

295.600 Substandard Rates as Ground for General Increase

Region III (Philadelphia)

Hourly wage rates for all job classifications of restaurant employees in five department stores are raised by 2½ cents per hour under Board's authority to eliminate substandards where some rates are substandard and general increase rather than tapered adjustments is indicated by intra-plant considerations. Aggregate amount awarded equals aggregate which would have been required to establish minimum standard rate of 55 cents for all non-tipped employees and rate of 45 cents for those receiving tips and meals. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

300. WAGES—TRAINEE RATES

300.250 Elimination of Trainee Rates

★Regional Board's order eliminating beginners and learners rates is remanded with instruction that hearing be held on merits of issue. Company contends that it was never given opportunity to be heard on merits.—Laclede Steel Co., 26 War Lab. Rep. 438 (*remanding* 23 War Lab. Rep. 595).

330. WORKING CONDITIONS

330.920 Work Rules

Company should discontinue present practice of requiring employees to compute their own daily earnings, except that workers should maintain production record on form supplied by company, where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all

reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.